

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

November 9, 2000

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday November 9, 2000 at 1:00 p.m. in the Planning Department Conference Room, 10th Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present. Chris Carraher, Chair; James Barfield (late arrival); Frank Garofalo; Bud Hentzen; Bill Johnson (late arrival); Ron Marnell; John W. McKay, Jr.; Jerry Michaelis; Susan Osborne-Howes; George Platt; Ray Warren and Harold Warner. Richard Lopez was not present. Staff members present were: Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Scott Knebel, Senior Planner; Barry Carroll, Associate Planner; and Karen Wolf, Recording Secretary.

1. Approval of minutes for October 5, 2000 and October 19, 2000.

MOTION: That the Planning Commission approve the minutes of October 5, 2000 as submitted.

MCKAY moved, **WARREN** seconded the motion, and it carried unanimously (10-0).

MOTION: That the Planning Commission approve the minutes of October 19, 2000 as submitted.

GAROFALO moved, **MARNELL** seconded the motion, and it carried unanimously (10-0).

2. Consideration of Subdivision Committee recommendations from November 2, 2000 meeting.

CARRAHER "I have been notified by staff that we need to pull Item No. 2/6 for discussion. Are there any other that need to be pulled for discussions? Seeing none, I will open the floor for a motion."

Subdivision Items 2/1, 2/2, 2/3, 2/4, 2/5, 2/7, 2/8 and 2/9 were approved subject to the Subdivision Committee recommendations (**OSBORNE-HOWES** moved **MCKAY** seconded the motion).

2/1. SUB2000-49 - One-step final Plat of Mid-Continent Airport Sixth Addition, located on the northwest and south sides of Tyler Road, on the north side of K-42 Highway.

- A. The applicant shall guarantee the extension of City water and sanitary sewer at the time of development.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan and the need for minimum pad elevations or drainage reserves. The drainage plan is approved.
- E. KDOT needs to comment on the access controls. The plat indicates access control except for one opening along K-42 Highway. Traffic Engineering needs to comment on the need for access controls along Tyler. Distances should be shown for all segments of access control. KDOT has approved one opening along K-42. Traffic Engineering has permitted one opening along the east side of Tyler for Lot 1, Block 1; one opening north of Yosemite for Lot 1, Block 2; and one opening south of Yosemite for Lot 1, Block 3.
- F. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- G. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- H. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- I. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.

- J. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- K. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- L. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- M. Perimeter closure computations shall be submitted with the final plat tracing.
- N. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- O. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- P. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

2/2. SUB2000-37 - Final Plat of Heimerman Meadows Addition, located west of 343rd Street West, north side of 4th Street North.

Note: This site is located in the County in an area designated as "rural" by the Wichita-Sedgwick County Comprehensive Plan.

STAFF COMMENTS:

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Standard soil testing is required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage concept. The removal or modification of terraces should be coordinated with NRCS. The Floodway reserve shall cover the waterway(s) after the terraces are removed. A Floodway Reserve shall be denoted in accordance with a Letter of Map Amendment obtained from FEMA.
- D. The Applicant should provide a 35-ft contingent dedication of half-street right-of-way adjoining the western property line to improve access to future lots to the north.

The requested contingent right-of-way has been provided; however it needs to be referenced in the platlor's text.
- E. The final plat shall dedicate access control except for one opening per lot. The plat shall dedicate 100 feet of complete access control from the east line of the contingent dedication.

The requested access controls have been dedicated.
- F. Since this is plat is located in the County, the City Council signature block may be deleted.
- G. The County Commissioners' signature block need only include the signature of the Chairman.
- H. A dimension on the east line of Lot 3 needs to be added.
- I. The Deputy County Surveyor has advised that the plat does not meet the minimum standards adopted by the Kansas State Board of Technical Professions (Regulation #66-12-1, K.S.A. 74-7037): Plat of Certificate of Survey, item #1.
- J. If a building setback is platted, the Zoning regulations permit a 35-ft setback from a County section line road.

- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- U. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

2/3. SUB2000-56 - Revised one-step Final Plat of ELLSON COURT ADDITION, located south of Central, east of Greenwich.

- A. The lots will be served by the Four Mile Creek sanitary sewer system. On the final plat tracing, appropriate wording shall be added to the Mayor's signature block indicating the City's agreement to allow a County sewer district to be formed within the City. County Engineering advises that the Sedgwick County Sewer District Impact Fee for development of each lot in this Addition is \$12,050.07. This amount is not amortized by special assessment and is due and payable in full when initial permits are pulled. Lots 1-4 are subject to the above impact fees unless removed from the Sewer District by the Board of the County Commissioners.
- B. The Applicant shall guarantee the extension of City water to serve the site.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- E. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- F. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- G. The Applicant shall guarantee the paving of the proposed interior street. The Subdivision Committee has

recommended a modification of paving width to the 21-ft standard. In accordance with the Subdivision Regulations, City Council will need to approve this modification of a street improvement standard.

- H. Complete access control shall be platted for the plat's frontage along Ellson and referenced in the plat's text.
- I. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 32-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- J. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street, drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- K. The 15-ft utility easement on Lots 1, 2, 3, and 4, Block 1, is recommended to be relabeled as a street drainage and utility easement.
- L. The Deputy County Surveyor has advised that the plat does not meet the minimum standards adopted by the Kansas State Board of Technical Professions (Regulation #66-12-1, K.S.A. 74-7037): Plat of Certificate of Survey, item #3, #4, #5 and #10.
- M. The MAPC Chairman shall be revised to reference "Christopher S. Carraher".
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

2/4. SUB2000-89 - Security Storage Hillside Addition, located o the northwest corner of Hillside and Kellogg.

- A. Municipal services are available to serve the site. City Engineering needs to comment on the need for any guarantees or easements. A temporary utility easement is needed to cover a water line proposed to be relocated.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.

- C. City Engineering needs to comment on the status of the applicant's drainage plan. Due to drainage onto Kellogg, a letter shall be provided from KDOT indicating their agreement to accept such drainage.
- D. As indicated on the P.U.D. site plan, the plat proposes complete access control along Chautauqua, Hillside and Kellogg. One access opening is proposed for Lewis near the Hillside intersection. Distances should be shown for all segments of access control.
- E. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings.
- F. A P.U.D. Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved P.U.D. (referenced as P.U.D. 2000-00002) and its special conditions for development on this property.
- G. The width of Chautauqua from the centerline to the property should be labeled.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

2/5. SUB2000-91 -One-Step REFLECTION RIDGE WEST ADDITION, located north of 21st Street, east side of Tyler.

- A. City water services are available to serve the site. City Engineering needs to comment on the need for any guarantees or easements. A guarantee for the extension of sanitary sewer shall be provided.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan and the need for a Reserve for the proposed lake between the two lots. The drainage plan is approved. A guarantee is required. The final plat tracing shall denote a Reserve between the lots for the lake denoted on the CUP site plan.
- D. In accordance with the CUP, the plat proposes one access opening per lot along Tyler. The CUP also required a 300-ft minimum separation between the openings which should be denoted on the face of the plat. The final plat tracing shall reference the access controls in the plat's text.

- E. In accordance with the CUP, a decel lane shall be provided taking into consideration the drive openings on the property to the south.
- F. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP (referenced as CUP 2000-00028) and its special conditions for development on this property.
- G. The applicant's agent shall determine any setback requirements for the pipelines adjoining the property by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- H. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

2/7. DED 2000-30 - Dedication of Access Control from Robert and Tressa Myers, for property located south of Central, on the east side of West Street.

OWNER/APPLICANT: Robert and Tressa Myers, 34 Huntington, Augusta, KS 67010-2319

LEGAL DESCRIPTION: The west 170 feet of the south 110 feet of Lot 13, Knight Acres Addition.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. SUB 2000-70 and is being dedicated for access control except for one opening along West Street.

Planning Staff recommends that the Dedication be accepted.

2/8. DED 2000-31- Dedication of Drainage Easements from Wallace Carp, Manager, Carp Brothers, LLC., and H.T. Ritchie, Ritchie Corporation, for property located on the southeast corner of 29th Street North and Hoover.

OWNER/APPLICANT: Wallace Carp, Manager, Carp Brothers, LLC., 2714 N. Hoover, Wichita, KS 67202; and H.T. Ritchie, Ritchie Corporation, Box 7717, Wichita, KS 67277

LEGAL DESCRIPTION: Two Drainage Easements located in the NW 1/4, Sec. 2, T27, R1W of the 6th P.M., Sedgwick County, Kansas.

1) The centerline of a 30-foot drainage easement described as:

Commencing at a point on the north line and 1300 feet west of the northeast corner of said northwest 1/4; thence south 400 feet to the point of ending; and,

2) The centerline of a 30-foot drainage easement described as:

Commencing at a point on the west line and 900 feet south of the northwest corner of said northwest 1/4; thence east 250 feet to the point of ending.

PURPOSE OF DEDICATION: This Dedication is a requirement of CON 2000-17 being dedicated for drainage purposes.

Planning Staff recommends that the Dedication be accepted.

2/9. DED2000-32 - Dedication of Street Right-of-Way from Wallace Carp, Manager, Carp Brothers, LLC., and H.T. Ritchie, Ritchie Corporation, for property located on the southeast corner of 29th Street North and Hoover.

OWNER/APPLICANT: Wallace Carp, Manager, Carp Brothers, LLC., 2714 N. Hoover, Wichita, KS 67202; and H.T. Ritchie, Ritchie Corporation, Box 7717, Wichita, KS 67277

LEGAL DESCRIPTION: Tract 1: The east 20 feet of the west 50 feet of the south 520.72 feet of the NW 1/4, Sec. 2, T27, R1W of the 6th P.M., Sedgwick County, Kansas; and,

Tract 2: Beginning at a point 30 feet south and 30 feet west of the northwest corner, NW1/4, Sec. 2, T27, R1W, of the 6th P.M., Sedgwick County, Kansas; thence south, parallel with and 30 feet east of the west line of said NW1/4, 1138 feet; thence east parallel with the north line of said NW1/4, 20 feet; thence north, parallel with and 50 feet east of the west line of said NW1/4, 818 feet; thence northeasterly to a point 75 feet west and 250 feet south of the northwest corner of said NW1/4; thence north, parallel with and 75 feet east of the west line of said NW1/4, 175 feet; thence east, parallel with and 75 feet south of the north line of said 1/4 Section, 175 feet; thence northeasterly to a point 50 feet south and 350 feet east of the northwest corner of said 1/4 Section; thence east parallel with and 50 feet south of the north line of said 1/4 Section to the east line of said 1/4 Section; thence north along the east line of said 1/4 section 20 feet; thence west, parallel with and 30 feet south of the north line of said 1/4 Section, 2612.44 feet; thence south, parallel with and 30 feet west of the west line of said 1/4 Section, 1138 feet to the point of beginning.

PURPOSE OF DEDICATION: This Dedication is a requirement of CON 2000-17 being dedicated for street right-of-way for Hoover.

Planning Staff recommends that the Dedication be accepted.

Item taken out of order:

2/6. SUB2000-90 - One-Step Final Plat of SPURRIER'S SUNSWEPT ACRES 2nd ADDITION, located on the east side of Greenwich, north of Pawnee.

- A. MAPD requests a concept plan indicating a resubdivision of this lot in the future to urban-scale lots. The final plat shall contain contingent street dedications and special building setbacks in accordance with the concept plan to facilitate subdivision into smaller lots in the future. The plat text shall indicate that the contingent street dedication shall be effective upon the replatting of an adjoining lot. The Subdivision Committee has not required the concept plan and associated street dedications and setbacks.
- B. A restrictive covenant shall be provided restricting the location of structures on this lot to avoid interference with the possible future streets and setbacks. The Subdivision Committee has not required this restrictive covenant.
- C. City water is available to serve the site. An Outside-the-City Water Agreement shall be provided.
- D. County Engineering needs to comment on the need for any additional guarantees at this time. No additional guarantees are required.
- E. This site is located within the Four Mile Creek sanitary sewer service area. system. The Applicant shall guarantee the extension of sanitary sewer if the building location is on the Crest St. side of the lot.

- F. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- G. County Engineering needs to comment on the status of the applicant's drainage plan. A drainage easement and guarantee is needed for improvement from the cross-road culvert on Crest Street, west to the pond.
- H. Distances should be shown for all segments of access control. The final plat tracing shall reference the access controls in the plat's text. Complete access control needs to be dedicated along Greenwich.
- I. The MAPC Chairman should be revised to reference "Christopher S. Carraher".
- J. County Engineering needs to comment on the need for additional right-of-way along Greenwich or Crest Street. An additional 10 feet of right-of-way is needed along Crest Street. An additional 20 feet of right-of-way is needed along Greenwich (60-ft half street right-of-way).
- K. The plat should be revised by replacing Mt. Vernon with Clark Street.
- L. A benchmark elevation needs to be added on the final plat tracing.
- M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

STRAHL "This is a 7-1/2 acre site that consists of one lot. It is located on the east side of Greenwich, north of Pawnee. The site was approved by the Subdivision Committee last week with one access opening along Greenwich on the west. Pursuant to the meeting last week, staff discovered the applicant will be building a home site on the eastern portion of the site with access from Crest Street over on the east. Therefore, staff recommends no openings along Greenwich and would recommend that Item H on the staff report be revised to reference a dedication of complete access control along Greenwich. Are there any questions for staff?"

MCKAY "Was the Subdivision Committee aware of this last week when they approved it?"

STRAHL "No."

MCKAY "Okay. Thank you."

CARRAHER "Are there any other questions for staff regarding this matter? Thank you. What is the pleasure of the Commission?"

KROUT "See if there is anyone in the audience to speak."

CARRAHER "Is there anyone in the audience to speak to this issue, Item No. 2/6? Seeing none, I will bring it back to the Commission?"

MOTION: That the Planning Commission recommend to the governing body that the request be approved, subject to the following:

- A. MAPD requests a concept plan indicating a resubdivision of this lot in the future to urban-scale lots. The final plat shall contain contingent street dedications and special building setbacks in accordance with the concept plan to facilitate subdivision into smaller lots in the future. The plat text shall indicate that the contingent street dedication shall be effective upon the replating of an adjoining lot. The Subdivision Committee has not required the concept plan and associated street dedications and setbacks.
- B. A restrictive covenant shall be provided restricting the location of structures on this lot to avoid interference with the possible future streets and setbacks. The Subdivision Committee has not required this restrictive covenant.
- C. City water is available to serve the site. An Outside-the-City Water Agreement shall be provided.
- D. County Engineering needs to comment on the need for any additional guarantees at this time. No additional guarantees are required.
- E. This site is located within the Four Mile Creek sanitary sewer service area. system. The Applicant shall guarantee the extension of sanitary sewer if the building location is on the Crest St. side of the lot.
- F. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- G. County Engineering needs to comment on the status of the applicant's drainage plan. A drainage easement and guarantee is needed for improvement from the cross-road culvert on Crest Street, west to the pond.
- H. County Engineering needs to comment on the need for access controls. Distances should be shown for all segments of access control. The final plat tracing shall reference the access controls in the plat text. Access control except for one opening needs to be dedicated along Greenwich.
- I. The MAPC Chairman should be revised to reference "Christopher S. Carraher".
- J. County Engineering needs to comment on the need for additional right-of-way along Greenwich or Crest Street. An additional 10 feet of right-of-way is needed along Crest Street. An additional 20 feet of right-of-way is needed along Greenwich (60-ft half street right-of-way).
- K. The plat should be revised by replacing Mt. Vernon with Clark Street.
- L. A benchmark elevation needs to be added on the final plat tracing.
- M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- N. The plat text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army

Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- S. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MARNELL moved, **GAROFALO** seconded the motion.

MCKAY "I would just like to have some input from the Subdivision Committee that heard the whole thing."

PLATT "What about the applicant? Is the applicant here?"

KROUT "The agent is here."

PHIL MEYER "I have talked to the applicant and they are fine with the complete access control requirement."

MCKAY "Okay."

CARRAHER "Are there any questions for the applicant? Thank you. Okay, we will move it back to the Commission. We have a motion on the floor that has been seconded."

VOTE ON THE MOTION: The motion carried unanimously (10-0).

CHRIS CARRAHER, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning and vacation items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

OSBORNE-HOWES "I would like to ask a question on Item 3/2, so could we pull it?"

CARRAHER "We will pull that. Are there any other vacation items that should be pulled?"

KROUT "Barry, there are no other items that staff needs to be pulled?"

CARROLL "No."

CARRAHER "Is there anyone here to speak on Items 3/1, 3/3, 3/4 or 3/5?"

3/1. **VAC2000-07** - Faith Christian Church, Inc., c/o Robert L. Wilson, Trustee & Southwest Boys club, Inc., c/o Tom Borrego; (Applicants) request the vacation of a street right-of-way described as:

That part of Bennet (Bennett) Avenue as dedicated in Orindgreff 2nd Addition, Wichita, Sedgwick County, Kansas, TOGETHER with that part of Bennett Avenue as dedicated in Silver Spur Second Addition to Wichita Kansas, TOGETHER with that part of Bennett Avenue as dedicated in Mobile Manor South, Wichita, Sedgwick County, Kansas, TOGETHER with the east 30.00 feet of Lot 1, Enterprise Christian Church Addition to Wichita, Kansas as dedicated in Deed Book 1462 at Page 222, and TOGETHER with the west 30.00 feet of Lot 1, Southwest Boys Club Addition, Wichita, Kansas as dedicated in Deed Book 1462 at Page 223. Generally located on Bennett Avenue north of 45th Street South and east of Meridian Avenue.

REASON FOR REQUEST: To vacate unused street right-of-way.

CURRENT ZONING: Street right-of-way surrounded by "MH" "SF-6" "B" & "NO"

The applicants are requesting to vacate an undeveloped street right-of-way for all of Bennett Avenue north of 45th Street South. According to the applicants, this right-of-way is unused and the applicant would like to develop along portions of this dedicated property.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time October 20, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described street right-of-way, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioners, the prayer of the petition ought to be granted.

Therefore, the vacation of a portion of street right-of-way described in the petition should be approved subject to the following condition:

1. The applicants shall provide an emergency access easement, by separate instrument, between the two manufactured home parks.
2. The applicants shall provide a survey of the existing utilities in order to determine sufficient portion of the easement to be retained and/or to determine any need for a substitute easement.
3. The applicants will supply, by separate instrument, adequate easement to cover the existing utilities.
4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following:

1. The applicants shall provide an emergency access easement, by separate instrument, between the two manufactured home parks.
2. The applicants shall provide a survey of the existing utilities in order to determine a sufficient portion of the easement to be retained and/or to determine any need for a substitute easement.
3. The applicants will supply, by separate instrument, adequate easement to cover the existing utilities.

4. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.

Barfield arrived at the meeting at 1:15 p.m.

3/3. VAC2000-47 - Candlewood Hotel Company requests to vacate a utility easement described as:

Lot 4; South Main Plaza Addition, Wichita, Sedgwick County, Kansas. The East 10' of the West 20' of the North 40' of said Lot 4. Generally located at the northwest corner of Main and Orme.

REASON FOR REQUEST: To vacate a utility easement for future construction
The applicant is requesting to vacate a utility easement for future construction.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time October 20, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described utility easement, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the utility described in the petition should be approved subject to the following conditions:
 1. The applicant shall grant a temporary easement by separate instrument until relocation of utility lines is complete.
 2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. The applicant shall grant a temporary easement by separate instrument until relocation of utility lines is complete.
 2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
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3/4. VAC2000-48 - Michael G. Loveland requests complete access control over a portion of the 127th Retail Addition and a portion of the utility easements within Lots 1, 5, 6, and 127th Retail Addition, described as:

Easement Vacation – That part of a utility easement in Lots 1, 5, and 6, 127th Retail Addition, Wichita, Sedgwick County, Kansas described as follows: Commencing at the NW corner of said Lot 5; thence S00°48'50"E along the west line of said Lot 5, 10.00 feet for a point of beginning; thence N89°02'54"E parallel with the north line of said Lot 5, 108.59 feet to a corner in said utility easement; thence S00°48'50"E along a line a line of said utility easement, 20.00 feet to a corner in said utility easement; thence S89°02'54"W along a line of said utility easement, 98.59 feet to a corner of said utility easement, said corner being 10.00 feet normally distant east of the west line of said Lot 5; thence S00°48'50"E along a line of said utility easement, 365.84 feet to a point on the south line of said Lot 6; thence S89°01'28"W along the south line of said Lots 6 and 1, 73.14 feet to the intersection with a line of said utility easement; thence N00°48'50"W along a line of said utility easement, 385.87 feet to a corner of said utility easement, said corner being 10.00 feet normally distant south of a north line of said Lot 6; thence N89°02'54"E parallel with a north line of said Lot 6, 63.14 feet to the point of beginning, EXCEPT that part of said Lot 1 described as follows: Commencing at the most southerly SE corner of said Lot 1: thence S89°01'28"W along the south line of said Lot 1, 10.00 feet; thence N00°48'50"W parallel with an east line of said Lot 1k 20.00 feet to a corner of said utility easement and for a point of beginning; thence continuing N00°48'50"W along a line of said utility easement, 345.85 feet to a corner of said utility easement, said corner being 30.00 feet normally distant south of a north line of said Lot 1: thence S89°02'54"W along a line of said

utility easement, 33.14 feet to a corner of said utility easement; thence S00°48'50"E along a line of said utility easement, 345.86 feet to a corner of said utility easement, said corner being 20.00 feet normally distant north of the south line of said Lot 1; thence N89°01'28"E along a line of said utility easement, 33.14 feet to the point of beginning.

Complete Access Control Vacation - The 40.00 foot major opening to Lot 1 on 127th Street East as granted in 127th Retail Addition, Wichita, Sedgwick County, Kansas. The north 31.50 feet of the north line of Lot 6, 127th Retail Addition, Wichita, Sedgwick County, Kansas. The east 2.00 feet of the north line of Lot 2, 127th Retail Addition, Wichita, Sedgwick County, Kansas. The west 5.00 feet of the north line of Lot 3, 127th Retail Addition, Wichita, Sedgwick County, Kansas. Generally located at the southwest corner of 127th Street East and Central Avenue.

REASON FOR REQUEST: To relocate the complete access control along 127th Street East and Central Avenue as platted in 127th Retail Addition and vacate utility easements for future development of the site.

The applicant is requesting to relocate the complete access control along 127th Street East and Central Avenue as platted in 127th Retail Addition and vacate utility easements for future development of the site

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time October 20, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described access control and utility easement, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of access control and utility easement as described in the petition should be approved subject to the following conditions:
1. The applicant shall dedicate access controls along Central and 127th Street East to reflect the relocated openings as denoted on the site plan.
 2. The applicant shall establish a joint access easement by separate instrument between Lots 1 & 6 and Lots 1, 2 & 3.
 3. A guarantee shall be submitted for the abandonment and construction of the relocated sanitary sewer line.
 4. A temporary easement shall be dedicated by separate instrument until relocation of the sanitary sewer line is complete.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. The applicant shall dedicate access controls along Central and 127th Street East to reflect the relocated openings as denoted on the site plan.
1. The applicant shall establish a joint access easement by separate instrument between Lots 1 & 6 and Lots 1, 2 & 3.
2. A guarantee shall be submitted for the abandonment and construction of the relocated sanitary sewer line.
3. A temporary easement shall be dedicated by separate instrument until relocation of the sanitary sewer line is complete.

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- 3/5. VAC2000-49** - West Wichita Development, Inc., c/o Jay Russell requests to amend the platlor's text on property described as:

Reserve "H" Auburn Hills 5th Addition, Wichita, Sedgwick County, Kansas. Generally located north of Kellogg, east of 151st Street West.

The applicant is requesting to amend the dedicated usages of Reserve "H," Auburn Hills 5th Addition, to include golf course and golf course-related facilities.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time October 20, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described dedicated usages, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation and amendment of the existing plat text to allow golf course-related facilities to be built on Reserve "H," Auburn Hills 5th Addition, described in the petition should be approved subject to the following condition:
1. Structures on Reserve "H" Auburn Hills 5th Addition, shall be limited to golf course and golf course-related facilities.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. Structures on Reserve "H" Auburn Hills 5th Addition, shall be limited to golf course and golf course-related facilities.

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- 3/2. VAC2000-00046** - W. June Poston requests the vacation of the maintenance easement and side yard setback, described as:

Maintenance Easement: The west 5 feet of Lot 4, Block 1, Crestview Country Club Estates, Overbrook 4th Addition to Wichita, Sedgwick County, Kansas, except the north 10 feet and the south 20 feet thereof. Side Yard Setback: The west 12 feet of Lot 4, Block 1, Wichita, Sedgwick, County, Kansas. Generally located east of 143rd Street, north of Central.

Maintenance Easement: The west 5 feet of Lot 4, Block 1, Crestview Country Club Estates, Overbrook 4th Addition to Wichita, Sedgwick County, Kansas, except the north 10 feet and the south 20 feet thereof. Side Yard Setback: The west 12 feet of Lot 4, Block 1, Wichita, Sedgwick, County, Kansas. Generally located east of 143rd Street, north of Central (14417 Killarney).

REASON FOR REQUEST: Construction of a house addition

CURRENT ZONING: "SF-6" Single-Family Residential

The maintenance easement and side yard setback use are established for development of a zero lot line dwelling on Lot 5. Lots 4 and 5 are in common ownership and no dwelling is intended for Lot 4.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time October 20, 2000, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described maintenance easement and side yard setback and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

- B. Therefore, the vacation of the maintenance easement and side yard setback described in the petition should be approved subject to the following conditions:

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

4. The applicant shall submit a restrictive covenant that ties together Lots 4 & 5.

BARRY CARROLL, Planning staff, "This is a request to vacate a maintenance easement and side yard at 14417 Killarney Court."

OSBORNE-HOWES "I noticed that this was not a unanimous decision and I just wanted to hear from the person who voted against it."

WARREN "I was that person. The reason I voted against it wasn't because I was against it. I was against a condition. One of the conditions we placed on that was that we require her to follow restrictive covenants, and I would assume that that was to protect somebody down the road. More I think the protective covenants were maybe being filed as a point of disclosure. A notice to the public, I guess. I don't know why."

The reason I opposed it was this. The folks that were making this application own two lots. They want to build over a property line, which could be approved normally by Glen Wiltse in Inspection. We wouldn't even get into it. But in this case, there was an easement that crossed it. So, No. 1, what she was asking for was very normal and natural. Something that normally she could do. Because of this easement, then it came before us. My feeling was this. The easement is not used, it has no planned use and we probably had no choice but to grant removal of that easement upon that request. So I didn't feel it was necessary that we have that restrictive covenant to foul up the title. That is the reason I voted against the motion. I didn't like the condition we put across it to make her file a restrictive covenant."

OSBORNE-HOWES "But you are not against it?"

WARREN "Oh, no. I am not against what she is doing, but I am against the condition that she file a restrictive covenant. That is the reason I voted against it. I think it is a very legitimate request she is asking for and I think we ought to approve it as she has applied for it without the condition of a Restrictive Covenant."

CARROLL "I just wanted to say that the applicant has secured an attorney and is putting together a restrictive covenant, maybe you already have that."

POSTON (From the audience) "We ought to have it today or tomorrow."

CARRAHER "Are there any other questions of staff?"

KROUT "I may have asked about this myself, but I just don't remember at the time. There is no change in access. There would be access to both of these lots, Neil?"

POSTON (From the audience) "The lots have been combined into one."

KROUT "Yeah, but I think that what Commissioner Warren is saying is that if you decided tomorrow that you wanted to build a separate house on each of these lots, why shouldn't you be permitted to do that? Why should you have to tie these lots together as long as the access remains the same. The reason we usually tie lots together is because we are trying to prevent a land-locking situation where one lot doesn't have access that is behind another lot, but in this case, I just don't remember the facts. I may have asked the question about this earlier, but I am not sure that I see the reason for tying the lots together myself."

CARRAHER "Ma'am, I will give you an opportunity to speak in a moment, but since you have responded to a question, could I get your name and address for the record?"

Barfield arrived at the meeting at 1:15 p.m.

JUNE POSTON "Yes. I live at 14417 Killarney Court."

CARRAHER "Are there any questions of staff at this time?"

MICHAELIS "I was just going to help answer Mr. Krout's question. The main reason is because that was the request of the applicant. They own both the lots and request to tie them into one. They want to add on an addition to the house that would extend over onto the other one, and they want to restrict any possible future building. So it was their request to turn them into one lot."

KROUT "It seems to me that that is something they could do privately."

CARRAHER "Does staff have anything to add?"

CARROLL "All I would state is that is the setbacks are going to be used for development of a zero lot line dwelling on Lot 5. Lots 4 and 5 are in common ownership and no dwelling is intended for Lot 4."

MILLER "She is building a patio or an addition that will cross over the lot line."

KROUT "Okay. I remember. Was this platted with side yard setbacks? Yes? Okay. Then we are removing the side yard setbacks now. So what we are trying to prevent is a house that is 5 feet away from another by tying the lots together, which we would otherwise do. Okay. I remember asking the question, but didn't know the response. I think it does make sense to tie the lots together in this case."

CARRAHER "Mr. Carroll, is there anything else you want to add? Are there any other questions of staff? Thank you. Would the applicant like to state something for the record. Please approach the podium."

POSTON "Thank you. Sometime this past summer, I decided that I wanted to add onto my house. My builder informed me that in order to do that, I would have to legally combine the two lots as the addition would be extending over to that side. So I combined those two lots. They came down for the building permit and they couldn't get one because all of this stuff is going on.

Now, all I want is just a building permit. That is all I want. I think it is all settled. My builder is standing by and if I don't get him pretty soon, I am going to lose him. Thank you."

CARRAHER "Are there any questions for Ms. Poston?"

WARNER "What did you do to combine the two lots?"

POSTON "I simply went to the County Court house and requested a combination of the two lots. It took about 10 minutes. I have the little card to prove that it has now been done. The Restrictive Covenant thing you were talking about is in the works. I have it ready. All I have to do is to take it to a notary and get it back to her to make sure it gets on my deed, although I thought that was very unnecessary. But I will do it."

CARRAHER "Are there any further questions of the applicant? Thank you, Ms. Poston. I will move this back tot he Commission."

WARREN "I would just like to clarify one thing, and that is that the Restrictive Covenants I don't think carry much of a request on behalf of the applicant."

MICHAELIS "I am not saying the Restrictive Covenants. I said the combination of the two lots. She wanted to combine them."

WARREN "But we are not doing anything here that I see that is really going to join the two lots. What I think she says she has done is to go to the County Clerk and they have joined them as tax lots, but I don't think there has been anything done that is going to legally join them. In other words there is going to have to be a replat or something to join those lots. We can talk about joining the lots."

CARRAHER "Before we move on, if we could have the members of the Commission speak up. I want to make sure we get everything for the record."

WARNER "Unless I misunderstand, the covenants were done as a requirement as a matter so that she would not have to replat this thing and take whatever time involved to require her to replat. This seemed to be the simplest, easiest way to do it so she could proceed to build onto her home."

WARREN "I would just like to comment, for the record, that we build across lot lines all of the time without having to replat. That is not unusual. "

Johnson arrived at 1:25 p.m.

PLATT "We are vacating the only way to bring the utilities into the one lot. So if you attempt to prevent someone in the future from having a lot that is not served by utilities to prevent her from having to go through the replat, we are."

CARRAHER "Is there any further commentary or questions by the Commission? I will open the floor for a motion."

MOTION: That the request be approved.

HENTZEN moved, **WARNER** seconded the motion.

VOTE ON THE MOTION: The motion carried with 11 votes in favor. There was no opposition.

CHRIS CARRAHER, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning and vacation items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

ZONING:

4. **Case No. ZON2000-00036** - Ernest A. and Doris Irene Jordan (Owner/Applicant); Stephen M. Jordan (Agent), request a zone change from "SF-6" Single-Family Residential to "LC" Limited Commercial on property described as:

Lots 1-10, inclusive, Block D, West Maple Gardens Addition, Wichita, Sedgwick County, Kansas. Generally located at the northwest corner of Taft and Julia.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant requests a zone change from "SF-6" Single-Family Residential to "LC" Limited Commercial on a 3.7 acre platted tract located at the northwest corner of Taft and Julia. The applicant proposes to develop the site with commercial uses.

The surrounding area is characterized by large-scale commercial development south of Taft and single-family residential development north of Taft. The property west of the site across Brummet is zoned "SF-6" Single-Family Residential and is developed with single-family residences. The property north of the site across University right-of-way (street not constructed) is zoned "SF-6" Single-Family Residential and is undeveloped. The property east of the site across Julia is zoned "SF-6" Single Family Residential and is developed with two single-family residences and three vacant residential lots. The property south of the site across Taft is zoned "GC" General Commercial and is developed with a Wal-Mart.

The surrounding area also is characterized by its proximity to the Mid-Continent Airport. The subject property is located under the approach to Mid-Continent Airport approximately one mile north of the end of the runway. Due to its location, the site is subjected to significant noise from aircraft.

CASE HISTORY: The site is in the West Maple Gardens Addition, which was recorded February 1, 1956. An application for "LC" Limited Commercial zoning (Z-3317) on the entire subject property was submitted by the applicant on February 22, 1999 and was subsequently withdrawn prior to hearing by the MAPC. On September 11, 2000, the MAPC heard a request by the applicant for "NR" Neighborhood Retail and "TF-3" Two-Family Residential zoning on the subject property. At that hearing, the applicant indicated that neighboring property owners had expressed opposition to the proposed duplexes and instead preferred the site to be developed with entirely commercial properties. Therefore, the applicant requested, and the MAPC approved, that the site be re-advertised for a zone change "LC" Limited Commercial on the entire subject property.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6" Undeveloped
SOUTH: "GC" Retail, General

EAST: "SF-6" Single-Family
WEST: "SF-6" Single-Family

PUBLIC SERVICES: The site has access to Taft, Julia, Brummet, and University. University is right-of-way only, and the street has not been constructed. Brummet is an unpaved local street. Taft is a four-lane collector street with traffic volumes of approximately 10,500 vehicles per day. Julia is a two-lane collector street with traffic volumes of approximately 8,500 vehicles per day. The 2030 Transportation Plan does not estimate future traffic volumes for Taft or Julia.

If the property were developed entirely with high-traffic generating uses permitted in the "LC" Limited Commercial district such as convenience stores or drive-thru restaurants, the subject property could generate up to 3,600-4,500 additional vehicles per day. If the property were developed with a small strip shopping center containing specialty retail, service businesses, and small sit-down restaurants, the subject property would generate up to 1,250-1,500 additional vehicles per day.

Given the already high traffic volumes on Taft and Julia, any commercial development on the subject property will impact the ability of the surrounding collector streets to carry through traffic to the regional commercial center to the south. Therefore, planning staff recommends replatting of the property to address traffic issues. Depending upon the type of development approved for the site, planning staff will recommend conditions of replatting that may include: dedication of additional right-of-way, additional access control, and traffic improvements such as turn lanes, through lanes, and/or traffic signals.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development. The Commercial Locational Guidelines indicate that commercial convenience centers ranging in size from 2-4 acres are typically expected to develop at one or more corners of arterial intersections and may be appropriately located at the intersection of an arterial and a collector street, where proper turn lanes are in place or planned. The subject property is located at the intersection of two collector streets with traffic volumes approaching those of an arterial street. The Commercial Locational Guidelines also indicate that commercial development should have require site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential land uses.

RECOMMENDATION: Planning staff finds the subject property appropriate for commercial development for a number of reasons. First, the high traffic on Taft and Julia and the site's proximity to a regional commercial center make it unlikely that it would be developed as single-family. Second, the site is significantly impacted by noise from Mid-Continent Airport, which further reduces the likelihood that the site will develop with single-family residences. Third, the owners of the nearby properties along Julia are actively marketing their properties as commercial properties even though they are zoned residential, thus indicating a perception by neighbors that the Julia corridor between Taft and Maple is appropriate for commercial development. Fourth, the Comprehensive Plan indicates that commercial convenience centers are appropriate for high traffic intersections if proper turn lanes are provided.

While planning staff finds the subject property appropriate for commercial development, the types of uses permitted by the "LC" Limited Commercial zoning district (i.e., drive through restaurants, convenience stores, auto-related uses) are too intense for the site and would likely lead to congestion on the surrounding collector streets and adverse impacts from lighting, noise, and trash on surrounding residential land uses. Planning staff finds the subject property to be suitable for commercial development consisting of specialty retail, service businesses, and small, sit-down restaurants. These types of uses are permitted by the "NR" Neighborhood Retail zoning district. In addition, planning staff recommends site design features to limit the impact of commercial development on surrounding residential uses.

Based upon these factors and information available prior to the public hearings, planning staff recommends that the request for "LC" Limited Commercial zoning be DENIED and instead that "NR" Neighborhood Retail zoning be APPROVED, subject to replatting within one year and the following provisions of a Protective Overlay:

1. A 6 foot high masonry wall shall be constructed parallel to the west property line. A 15 foot deep landscaped buffer shall be provided along the entire length of the west property line on the west side of the masonry wall. The landscaped buffer shall be planted with 1 shade tree or 2 ornamental trees per 30 lineal feet of frontage along Brummet.
2. If the vacant property north of the site develops with residential uses, a 6 foot high masonry wall shall be constructed along the north property line.
3. Light poles shall be limited to a maximum height of 14 feet.
4. Building exteriors shall share uniform architectural character and shall be predominantly earth-tone colors with vivid colors limited to incidental accent. Extensive use of backlit canopies and neon or fluorescent tube lighting on buildings shall not be permitted.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by large-scale commercial development south of Taft and single-family residential development north of Taft. The zoning north, west, and east of the site is "SF-6" Single Family Residential. The zoning south of the site is "GC"

General Commercial. The properties fronting Julia between Maple and Taft are mostly vacant and are being marketed as commercial properties despite their residential zoning. The surrounding area also is characterized by its proximity to the Mid-Continent Airport. The subject property is located under the approach to Mid-Continent Airport approximately one mile north of the end of the runway. Due to its location, the site is subjected to significant noise from aircraft.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single-Family Residential, which accommodates moderate-density single-family residential development and complementary land uses. Given the site's location along high-traffic streets, near a regional commercial center, and under the approach to an airport, it is unlikely that the site will develop with single-family residential uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by securing traffic improvements through replatting and by the recommended site design features.
4. Length of time the subject property has remained vacant as zoned: The subject property was platted into single-family residential lots in 1956 and has yet to develop with single-family residential units.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: Although the Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" development, the Commercial Locational Guidelines indicated that commercial convenience centers ranging in size from 2-4 acres may be appropriately located at the intersection of an arterial and a collector street, where proper turn lanes are in place or planned. The subject property meets these criteria since it is located at the intersection of two collector streets with traffic volumes approaching those of an arterial street.
6. Impact of the proposed development on community facilities: Community facilities should not be adversely impacted as long as sufficient right-of-way, access controls, and traffic improvements are provided for through the replatting process.

KNEBEL "The surrounding area to this application is characterized by residential properties in three directions and commercial properties to the south. The property is vacant at this time. The residential property to the north is primarily vacant. There is a very low density development on it at this point. There is more vacant residential property to the northeast and partially developed residential property to the east. There is residential property to the west.

The area is also near Mid-Continent Airport and is basically directly under the approach to one of the runways. This case may be familiar to most of you as you heard it on September 11 as a request for Neighborhood Retail and Two-Family zoning. It is basically Neighborhood Retail along Julia and Two-Family along Brummet. At that hearing, the applicant indicated that he had received some comments at the District Advisory Board from neighboring property owners speaking against the duplex zoning and he requested that you direct the re-advertising of this case for Limited Commercial zoning for the entire tract, which was done.

The site has access to four streets or four-street right-of-way. University is here (indicating); the street is not constructed. You also have Brummet running north/south, then Julia and then Taft. Julia and Taft are both collector streets. Taft has over 10,000 vehicles per day; Julia has over 8,000 vehicles per day currently. Since they are not arterials, they are not projected as far as future traffic volumes in the Transportation Plan. We did do a little bit of projecting, as you can see in the staff report, regarding the impact of commercial development on this property on those two streets. What we came up with was an estimate of 3,600 to 4,500 vehicles per day if the property were developed with high traffic generating uses, such as convenience stores, drive-through restaurants, other auto related uses, or a lower increase in traffic, around 1,200 to 1,500 if the property were developed with more retail and specialty services and smaller sit-down restaurants.

Given the fact that you already have high traffic volumes on both Taft and Julia and that their purpose is to serve as a collector street to bring regional traffic to the larger commercial areas located to the south along Kellogg. Planning staff is recommending that the property be re-platted; if the zoning change is to be approved and that the purpose of that replatting would be to establish access controls and off-site traffic improvements that would be necessary to ensure that the impact of the commercial development on this particular property would not impact the ability of those two streets to carry traffic to the larger commercial areas to the south.

The recommendation section indicates that the Planning staff finds the subject property appropriate for commercial development. There are a number of reasons including high traffic; the impact of the airport on the property, the marketing of nearby properties that are zoned residential as commercial properties, which indicates a perception that the area is appropriate for commercial development by property owners in the area. Also, the location adjacent to two heavily trafficked collector streets. While we do recognize that the property is appropriate for commercial development, we don't think the property is appropriate for the types of uses permitted in the Limited Commercial district. Those types of uses that we think would have a very negative impact on the ability of these two streets to carry through traffic, such as drive-through restaurants and convenience stores or the things that we see would be a detriment by approving Limited Commercial zoning. Instead, we think the property would more appropriately be developed with retail, or smaller scaled businesses, and those types of businesses are permitted in the Neighborhood Retail district. Therefore, we have recommended that the request for Limited Commercial be denied and instead that Neighborhood Retail be approved, subject to platting and to some conditions that would limit the impact of the development on the neighboring property.

Those conditions are: a masonry wall, landscaping, limiting the height of the light poles and some architectural and design features for the buildings that would be constructed on this.

This case was heard by the District Advisory Board, and I will let Dale explain the findings they had to you."

MILLER "The D.A.B. recommended approval, but what they wanted was to recommend 'LC', subject to the applicant and staff getting together and coming up with a Protective Overlay that would restrict out certain 'LC' uses that we could agree on. The applicant was at the meeting and indicated that he saw the sight as being something like Towne West. He wanted an anchor store and then smaller stores that would then be attracted to an anchor store. I tried to explain to the D.A.B. that the difference 'NR' and 'LC' was basically some of the more intense uses, like restaurants with drive-throughs, convenience stores, restaurants and things, but that the 'NR' district also had a maximum size on any individual business of 8,000 square feet and that restaurants were restricted to 2,000 square feet. It also had a prohibition against outside storage, which 'LC' doesn't and some other things like that.

But they felt like 'LC' was the appropriate district, but that there ought to be some use limitations included. We are supposed to get together with the applicant and work that out. So I guess we are kind of waiting to see what happens here before we meet with them. That was their recommendation."

KNEBEL "That includes the staff's remarks on this case."

CARRAHER "Are there any questions of staff?"

HENTZEN "Scott, when we had this up here before, did the applicant apply for 'NR' or 'LC'?"

KNEBEL "Well, and I kind of skipped though that, actually the applicant originally, back in 1999 had applied for Limited Commercial zoning. A couple of weeks ago, he did apply for Neighborhood Retail and 'TF-3'."

HENTZEN "Neighborhood Retail. And we didn't grant it?"

KNEBEL "That is correct."

HENTZEN "As I remember, we suggested, due to what he said about the neighbors opposing triplexes, that he would get 'LC'. What did you recommend when he was up here a couple of weeks ago?"

KNEBEL "We recommended approval of Neighborhood Retail and 'TF-3'."

HENTZEN "And now he has applied for 'LC' and the D.A.B. said yes, except for a few itemized uses."

KNEBEL "I wasn't there, but yeah, that is what I understood Mr. Miller to say."

MILLER "They are recommending 'LC' subject to us working on a list of prohibited uses, yes."

KNEBEL "I don't believe they did indicate the specific uses, did they?"

MILLER "Other than a restaurant with a drive-through and a convenience store. Those are the only two they identified."

HENTZEN "Okay."

KROUT "Dale, besides use limitations, the Neighborhood Retail district also has stricter sign regulations because it is supposed to be more compatible with nearby residential areas. Did they talk about sign regulations and feel that that wasn't an issue in this case?"

MILLER "They didn't discuss that."

WARREN "Are we going to have an applicant speak to this, do you know?"

CARRAHER "Yes, in just a moment. Are there any further questions of Mr. Knebel?"

BARFIELD "It appears to me that basically what we are suggesting or recommending today is the very thing we turned down the last time he was here. I assume that the only deviation here is the duplexes."

KNEBEL "Actually there was no decision to deny the request last time. The decision of the Planning Commission was to re-advertise the case for Limited Commercial zoning as the request for the entire subject property."

BARFIELD "Well, wouldn't we have to deny his original application before we get to that point?"

KNEBEL "No. You could direct staff to re-advertise it again today for yet another zoning classification if you so chose."

BARFIELD "I guess that is my point. That is exactly what we did. He agreed and we agreed to re-advertise it. Now it is back and we are denying the 'LC' and recommending 'NR', which is what he applied for originally, the way I read it."

KNEBEL "That is correct. Staff has not changed our position on this particular application."

CARRAHER "Are there any other questions for staff? Thank you, Mr. Knebel. Has anyone had any ex parte contact disclosures that need to be made regarding this item? Okay. Is the applicant in attendance for this item? No? Okay, that is unusual. I guess we will move it to the audience. Is there anybody in the audience who is here to speak either in favor of or in opposition to Item No. 4. Seeing none, we will move it back to the Commission."

WARREN "I have a question of staff, whoever worked with these people. Somehow would it foul them up if we were to defer this and take a look at maybe what they have asked for and what apparently D.A.B. has approved to create the 'LC' zoning with a Protective Overlay as opposed to 'NR'? Either one of them could work, but I think the Protective Overlay on the 'LC', if it was agreeable to the community members."

KNEBEL "It doesn't matter to me one way or the other."

WARREN "You don't think that a two-week delay is going to make any difference?"

KNEBEL "I don't know. I can't speak for the applicant."

JOHNSON "Dale, or Marvin, if the motion was made the same as D.A.B., then basically you guys are going to work with them and come up with some kind of an overlay? Let me ask, was the applicant at the D.A.B. meeting?"

MILLER "Yes."

JOHNSON "It makes it a little bit awkward with him not being here."

KROUT "My recommendation to you is that you defer it for two weeks. That will give us time to talk to the applicant; identify for you and for him all of the differences between Neighborhood Retail and 'LC' and find out what he is and isn't agreeable to. I think right now, we would be in a quandary to try to get something together for the City Council."

CARRAHER "Mr. Johnson, would you care to make such a motion?"

JOHNSON "Unless there is some other discussion."

MOTION: That the item be deferred for 4 weeks and that staff get with the applicant and get this overlay worked out.

JOHNSON moved, **WARNER** seconded the motion.

CARRAHER "Did anyone have a question regarding the motion?"

MARNELL "I have a question for Scott. On condition No. 1, you required a landscaped buffer, and on Item No. 2, it says 'if the vacant property north develops with residential uses'. Is there a reason that those weren't identical?"

KNEBEL "I think the only reason I didn't put it in there is that I have spoken with the gentleman that owns the property to the north who has indicated that he is watching this application and has said he intends to apply for commercial zoning if it is approved. It was just kind of an oversight. It probably does make sense to have them be consistent."

HENTZEN "Fellas and ladies, we have already had public hearing on this a couple of weeks ago, now we have had another one. I think we ought to vote on granting the application, subject to the Protective Overlay that the D.A.B. suggested. It sounds like the vote we have had in Florida. We are going to delay and delay and delay. There is nobody here in opposition. There really wasn't anybody here in opposition the last time. Why are we delaying?"

PLATT "I certainly can't vote for a Protective Overlay when we don't know what is in it. Since the D.A.B. didn't suggest what ought to be in it and the applicant didn't make any suggestions, I don't see how we can possibly vote to approve it subject to a Protective Overlay when we don't know what it protects. I don't see any choice but to delay it."

MARNELL "I agree with Dr. Platt on that that either we approve the application for the original 'LC' zoning, or we defer it. One of the two, but not something half-baked in between."

HENTZEN "Well, we had staff there at the D.A.B. meeting. If we needed to have that as a recommendation, surely the D.A.B. should have been told that and they could have told us what they wanted in the overlay."

MILLER "I attempted to get them to clarify what they wanted and they were not able to do so."

HENTZEN "So they adjourned the meeting and you went home, huh?"

MILLER "Well, I was there until 10:43."

GAROFALO "Dale, the applicant was there at the D.A.B. meeting?"

MILLER "Correct."

GAROFALO "Did he say anything about the Protective Overlay?"

MILLER "He just said he wanted to be as flexible as possible and was agreeable to eliminating the convenience store and the drive-through restaurant."

GAROFALO "So apparently, he wouldn't be opposed to some sort of overlay?"

MILLER "That was the impression I had, but it is just a question of what it is."

OSBORNE-HOWES "Another choice would be if we needed to vote on something today, we could just vote on the Neighborhood Retail."

MOTION: That the question be called.

WARNER moved, **WARREN** seconded the motion, and it carried with 11 votes in favor. Marnell opposed.

VOTE ON THE MOTION: The motion carried with 8 votes in favor (Warren, Johnson, Osborne-Howes, Warner, Platt, Carraher, Garofalo, and Barfield), and 4 in opposition (McKay, Marnell, Michaelis, Hentzen).

5. **Case No. CON2000-00041** - Bill L. Bailey (Owner/Applicant) request a Sedgwick County Conditional Use to allow a rural home occupation on property described as:

A tract of land described as beginning 166.5 feet north of southeast corner of northeast quarter of section 33, township 25 south, range 1 west of the 6th p.m.; thence north 166.5 feet; thence west parallel with the south line 11318.3 feet; thence south parallel with east line 166.5 feet; thence east parallel with south line to point of beginning, Sedgwick County, Kansas. Generally located west of Ridge Road, 1/2 mile south of 85th street and 1/2 mile north of 77th Street North.

BARRY CARROLL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: In July 2000, County Code Enforcement staff received an anonymous complaint regarding the applicant's property. County Code Enforcement staff made an inspection and found "manufactured homes, other than a residence, and stored and inoperable vehicles plus parts" on site. A letter was forwarded to the applicant on August 8, 2000 with instructions to remove the items or face citations. In the interim, the applicant applied for a "Legal Non-Conforming Use for the storage of construction equipment, materials and trailers." On August 22, 2000 a letter was forwarded from the Director of County Code Enforcement that denied the request. At this point, County staff suggested that the applicant could apply for a Rural Home Occupation that would require approval of a Conditional Use. County staff is taking no further enforcement action until a decision is reached regarding the pending Conditional Use request.

Consequently, the applicant is requesting a Conditional Use for a Rural Home Occupation on a 5.038-acre tract located on the west side of Ridge Road, ½ mile south of 85th and ½ mile north of 77th. The property is narrow in width (north to south) and long in depth (east to west). There are some trees that screen the north and south property lines at the eastern end of the property (near Ridge Road). Although the property is zoned for rural residential use, it is currently being used as a residence, an office and storage for the applicant's construction business. The applicant has no full time and only part-time seasonal employees. There are no sales conducted on the property. The applicant has owned the property since 1989. In 1990, the applicant's manufactured home and storage buildings were destroyed in a tornado. He currently lives in a manufactured home on-site (see site plan).

The application area has one large metal storage shed and an assortment of small sheds and chicken coups. The applicant, a Navy WWII veteran, has chickens, ducks, geese, dogs and other wildlife on the property. The west end of the property is set aside as a wildlife refuge and has no storage materials or sheds. There are several small ponds on the property as well. There is a backhoe, a dump truck and trailer and pick-up truck on-site. There is construction-related material stored on the grounds as well.

There are two small, non-residential, manufactured homes on site. One has been refurbished and the other is in the process of being refurbished. The applicant leases the small mobile homes to construction companies on an as-needed basis. These small manufactured homes are routinely returned, refurbished, leased, and stored on-site until needed again.

Construction sales and service is first permitted in the "GC" General Commercial zoning district per UZC unless the business is primarily a retail business and not a wholesale or service business. In that situation, it is a permitted use in

the "LC" Limited Commercial zone. The applicant wants to continue to use his property, as he has since 1989, as a residence and for storage of construction equipment and materials. The application area is located in an agricultural area that has "RR" Rural Residential zoning surrounding it on all sides. There are residences to the north and south of the property. The areas east, west and southwest are used for agricultural purposes.

The applicant has submitted a site plan drawn to scale for review (see attached Site Plan). Additionally, the applicant has secured a petition, signed by ten of his neighbors, in support of his request for a Rural Home Occupation (see attached petition).

ADJACENT ZONING AND LAND USE:

NORTH:	"RR"	Rural Residential	Residential/Agriculture
EAST :	"RR"	Rural Residential	Agriculture
SOUTH:	"RR"	Rural Residential	Residential/Agriculture
WEST:	"RR"	Rural Residential	Agriculture

PUBLIC SERVICES: Access to the property is via Ridge Road, a two-lane arterial paved to county standard. Traffic volumes in 1997 were rated as 3,220 ADTs for the segment of Ridge Road between 77th and 85th. Volumes are predicted to increase to approximately 5,548 by 2030. The 1998-2003 Sedgwick County Capital Improvement Program does not include any improvements, at this time, for Ridge Road between 77th and 85th. The applicant has well water and a septic tank/lateral sewer system. Rural water is not available at the current time.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" in the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this area as appropriate for "rural residential" use. Rural Home Occupations may be allowed with a Conditional Use on sites in the "RR" and "SF-20" zoning districts under the following conditions: a) "Rural home occupations as specified in Sec. IV-E.7 that do not meet one or more of the stated conditions, but are limited to no less than five acres and no more than four non-residents employed in the home occupation, may be approved as Conditional Uses in accordance with the requirements and procedures for Conditional Uses in this code."

RECOMMENDATION: The property will be developed in general conformance with the site plan approved by the MAPC or County Commission. Based on the information available prior to the public hearing, and a site plan showing the location of the construction office and storage, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. The Conditional Use shall only be permitted for a Rural Home Occupation involving a construction office and storage of construction equipment and materials.
2. The applicant shall consolidate all of his construction vehicles and materials into a storage yard that does not exceed 10,000 square feet, in the area generally indicated on the submitted site plan.
3. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The application area and adjacent properties are zoned "RR" Rural Residential. The land in the immediate vicinity of the property is used either for large-lot residential and/or agricultural purposes. The character of the application area is low-density rural residential. To the north and south are large-lot residential uses. The properties to the east, west and southwest have agricultural uses with a few large-lot residential uses.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be used agriculturally or as a large-lot, low-density, residential use as it is today. The zoning code does, however, provide for certain non-residential uses to be permitted as a "home occupation" with an approved Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed Conditional Use introduces non-residential uses into an area that is reserved for low-density residential use area. Construction yards do not always blend well with residential or agricultural uses. The applicant has, however, met with his neighbors who have signed a petition in support of his request for a Rural Home Occupation (see petition).
4. The length of time the subject property has remained vacant as zoned: The property has been used as the applicant's residence, office and construction business site since 1989.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Wichita Land Use Guide" in the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this area as appropriate for "rural residential" use. Rural Home Occupations may be allowed with a Conditional Use on sites in the "RR" and "SF-20" zoning districts under the following conditions: Rural home occupations as specified in

Sec. IV-E.7 that do not meet one or more of the stated conditions, but are limited to no less than five acres and no more than four non-residents employed in the home occupation, may be approved as Conditional Uses in accordance with the requirements and procedures for Conditional Uses in this code."

6. Impact of the proposed development on community facilities: Traffic impact should be minimal. Currently, the applicant has well water and a septic/lateral sewage system. Granting this Conditional Use permit should have no negative impact on the general area.

CARROLL "Mr. Bill Bailey, who is the owner-applicant, is here this afternoon. This is located west of Ridge Road, half a mile south of 85th Street and half a mile north of 77th Street. It is a little over 5 acres, a long narrow lot to the west. The proposed use is a rural home occupation. The site plan that you were given shows the long lot to the west. This area is surrounded by rural agricultural uses.

This case was brought to our attention by the County Code Enforcement. In July, they received a complaint regarding Mr. Bailey's property. A letter was forwarded to him citing problems with inoperable vehicle parts and stored items. He attempted to get a legal non-conforming use and was denied that. The County staff then suggested that the applicant apply for a rural home occupation. The applicant has lived at this site since 1989 and just simply wants to continue doing what he has done over the years. He has no full-time and only part-time seasonal employees; there are no sales conducted on the property.

I would note that he has a petition signed by his neighbors that are supporting of his request. The Wichita Comprehensive Plan permits a rural home occupation with the Rural Residential 'RR' zoning, so to summarize, we are recommending that it be approved, subject to the following three conditions: (1) That it only will be a rural home occupation regarding construction office and storage of construction equipment; (2) That the applicant consolidate all of his vehicles and materials into a storage yard that does not exceed 10,000 square feet and that any violation of this would render the Conditional Use null and void. I might add that I have not received any phone calls about this particular case."

CARRAHER "Are there any questions for staff regarding the item?"

PLATT "The staff comments say that the 10,000 square feet will be an area generally indicated on the submitted site plan. Where is that? I couldn't find it."

CARROLL "It is in the back. Well, look on the second page where it says P and S. It is for parking and storage."

PLATT "That P and S covers most of the site."

CARROLL "The far west part of the site is not used. It is actually set aside as a wildlife preserve. Just the east part is used for storage."

JOHNSON "I'm curious as to how the 10,000 square foot was arrived at?"

CARROLL "That is in our Code."

CARRAHER "Are there any further questions for staff regarding the item?"

PLATT "I am still confused as to how much of the site is used just for storage. And my second question is, can it be enforced? Is there any way to make sure that the storage is where it is supposed to be?"

CARROLL "The storage is on this end (indicating) and there are considerable trees on the eastern edge of the property on both sides. I think the County Code Enforcement people are aware of this case and will be monitoring it."

KROUT "This was not one of the better site plans that have been submitted and you can see that it is in three pieces. It is a very long, narrow lot. If you were to put those three pieces together, you would see that the area that is identified as open storage is in the middle of the middle page. It is really an area of about 120 x 80 feet or something like that. Your xerox copies aren't quite as easy to read as the original, but does have some color outlines and the color outlines show that area as designated for outside storage. When we send this to County Code Enforcement, I think what we will do is piece those maps together and outline the outside storage area so it will be clear to them."

CARRAHER "Are there any further questions of staff regarding this item? Thank you, Mr. Carroll. Would the applicant like to speak to the item?"

BILL BAILEY "I have lived at this address for approximately 14 to 15 years, but I took possession in 1989. At the time which I have been in the City and the County as a contractor, as Bill Bailey Construction, I have lost a trailer in 1990 and had to replace that. Since then, I have been trying to build up my place and work outside at the same time. All I am asking for is a place, and all I have left in my construction agenda is a backhoe, a dump truck, a trailer and various supplies that I use for storage to move in and out. I have two trailers out there that we use for construction offices. I repair them and lease them out. They are on the place maybe 30 to 40% of the time. The rest of the time is gone. The rest of the time, all I am asking you is a place to park my equipment.

The place he was referring to is way back to the middle part of the property. It is hardly noticeable from the road, or from either side, where I park my equipment. All I am asking is just permission to continue with my business like I have been doing it in the past years. Thank you."

CARRAHER "Are there any questions for the applicant? Now, we will move it to the gallery. Is there anybody in the audience here to speak either in favor of or in opposition to the item? Seeing none, we will move it back to the Commission. What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The application area and adjacent properties are zoned "RR" Rural Residential. The land in the immediate vicinity of the property is used either for large-lot residential and/or agricultural purposes. The character of the application area is low-density rural residential. To the north and south are large-lot residential uses. The properties to the east, west and southwest have agricultural uses with a few large-lot residential uses. The suitability of the subject property for the uses to which it has been restricted: The property could be used agriculturally or as a large-lot, low-density, residential use as it is today. The zoning code does, however, provide for certain non-residential uses to be permitted as a "home occupation" with an approved Conditional Use. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed Conditional Use introduces non-residential uses into an area that is reserved for low-density residential use area. Construction yards do not always blend well with residential or agricultural uses. The applicant has, however, met with his neighbors who have signed a petition in support of his request for a Rural Home Occupation (see petition). The length of time the subject property has remained vacant as zoned: The property has been used as the applicant's residence, office and construction business site since 1989. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Wichita Land Use Guide" in the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this area as appropriate for "rural residential" use. Rural Home Occupations may be allowed with a Conditional Use on sites in the "RR" and "SF-20" zoning districts under the following conditions: Rural home occupations as specified in Sec. IV-E.7 that do not meet one or more of the stated conditions, but are limited to no less than five acres and no more than four non-residents employed in the home occupation, may be approved as Conditional Uses in accordance with the requirements and procedures for Conditional Uses in this code." Impact of the proposed development on community facilities: Traffic impact should be minimal. Currently, the applicant has well water and a septic/lateral sewage system. Granting this Conditional Use permit should have no negative impact on the general area.) I move that we recommend to the governing body that the request be approved, subject to staff comments.

HENTZEN moved, **MCKAY** seconded the motion, and it carried unanimously (12-0).

6a. Case No. CON2000-00040 - City of Wichita Professional Engineering Corporation (Rob Hartman) and City of Wichita Sewer and Water Department (David Warren) request a Conditional Use to permit a treatment plant pump station and Government Service (fire station); and

6b. Case No. ZON2000-00046 - City of Wichita Professional Engineering Corporation (Rob Hartman) and City of Wichita Sewer and Water Department (David Warren) request a zone change from "SF-6" single-family residential to "LC" Limited Commercial on property described as:

A tract of land in the Northwest Quarter of Section 12, Township 27 South, Range 2 West of the 6th P.M. described as beginning 30 feet South and 25 feet East of the Northwest corner of the Northwest Quarter of said Section 12, thence East 457.1 feet; thence South 15 feet; thence East 9.75 feet; thence South 451.85 feet; thence West 466.85 feet; thence North 466.85 feet to the beginning.

EXCEPT

A tract of land described as beginning on the West line, 450 feet South of the Northwest corner of the Northwest Quarter of Section 12, Township 27 South, Range 2 West; thence North along the West line of the Northwest Quarter a distance of 450 feet to the Northwest corner of the Northwest Quarter; thence East along the North line of the Northwest Quarter a distance of 482.10 feet; thence South 45 feet; thence East 9.75 feet; thence South 20 feet to a point 491.85 feet East and 65 feet South of the Northwest corner of the Northwest Quarter; thence West parallel to the North line of the Northwest Quarter, to a point 65 feet South and 50.59 feet East of the Northwest corner of the Northwest Quarter of Section 12; thence Southerly to a point 400 feet South and 40 feet East of the

Northwest corner of the Northwest Quarter; thence Southerly to a point 450 feet South and 25 feet East of the Northwest corner of the Northwest Quarter of Section 12, thence West 25 feet to the point of beginning, as deeded to the Board of County Commissioners of Sedgwick County, Kansas, all in Sedgwick County, Kansas. Generally located on the southeast corner of 135th Street West and 21st Street North.

DALE MILLER, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The City of Wichita is currently developing a new wastewater treatment plant at 37th Street North and 135th Street West. In order for the new plant to effectively serve its designated service area, a pumping station is needed to pump sewage from the collection lines to the wastewater treatment plant. The collection lines feeding the pump station operate on gravity flow so the potential location of the pump station is strongly influenced by the station's elevation relative to the service area's collection system. The City has acquired 2.19 acres of "SF-6" Single-family Residential zoned land located at the southeast corner of 21st Street and 135th Street West. The City would like to develop the pump station, a fire station and two retail pad sites at this location. This location was selected after a lengthy analysis of possible sites by both city staff and a consultant.

To accomplish this project, a Conditional Use permit to allow a "major utility" is necessary for the pump station. A Conditional Use to permit a "government service" is required for the fire station (if the parcel on which the fire station is proposed is not zoned "LC") and "LC" Limited Commercial is needed for the two-retail pad sites. The application area is currently developed with a home and outbuildings. A significant tree row exists along most of the east and south property lines.

The proposed site plan indicates that the pump station is to occupy Parcel 4, located in the southeast corner of sites. Parcel 4 is 36,371 square feet in size. The pump station would be enclosed within a 40 by 60-foot building that is to be constructed of either brick or split-face block. Height of the building is expected to be 20 to 25 feet. No noise should be discernable from the pump station during normal operations as the pumps are driven by electric motors, except during emergency situations. A back-up generator will be on-site and may make some noise when it is utilized or test run. The latest odor control equipment will also be installed. A 50-foot building setback line is shown along the south and east property line. Access to Parcel 4 is via an access easement across Parcel 3 connecting to 135th Street or by an access drive located between Parcels 1 and 2 that leads to 21st Street. A 20-foot wide landscape buffer is depicted along the east and south property line. The only use proposed for Parcel 4 is a pump station. The pump station is scheduled to go in use in June 2002. Parcel 4 would remain zoned "SF-6" Single-family Residential even with the approval of the Conditional Use request.

Parcel 3 is 45,400 square feet in size and is located in the southwest corner of the application area. A fire station may be located on Parcel 3. Adopted plans depict the need for a fire station in the 13th Street and 135th Street to 37th Street and 119th Street area. Construction for this station is scheduled for 2007. This parcel will have direct access to 135th Street. This parcel would also have access to 21st Street via an access drive that is centered on the lot line between Parcels 1 and 2. A 20-foot landscape buffer is depicted along the south property line. A 35-foot building setback is shown along 135th Street. In addition to the fire station, proposed uses are: all uses allowed in the "LC" zoning district except adult entertainment, group houses, group residential half-way houses, correctional placement residences, private clubs, taverns, drinking establishments, drive in or drive through restaurants, convenience stores, service stations, car wash or auto repair or supply store with overhead doors. Parcel 3 would be rezoned from SF-6 to "LC" Limited Commercial if this request is approved. If the "LC" rezoning is not approved, a Conditional Use to permit a "government service" is needed, as "government services" are permitted uses in the "LC" district, but require a "CU" in the "SF-6" district.

Parcels 1 and 2 both front 21st Street. Parcel 1 also has frontage along 135th Street. Parcel 1 contains approximately 49,720 square feet while Parcel 2 contains approximately 45,276 square feet. A 35-foot building setback is shown along the north side of Parcel 2 and along the north and west side of Parcel 1. Both parcels would take access from a single joint access drive off of 21st Street. Proposed uses for these two parcels are: all uses allowed in the "LC" zoning district except adult entertainment, group houses, group residential half-way houses, correctional placement residences, private clubs, taverns, and drinking establishments.

Signage is proposed to be limited by the Sign Code. Landscape screening along the south property lines of Parcels 3 and 4 and along the east property line of Parcel 4 will be provided at 1 1/2 times minimum code standards. Lighting will be shielded to reflect away from residential areas. Trash receptacles will be screened to reasonably hide them from ground view.

All neighboring land is zoned "SF-20" Single-family Residential, and developed with single-family residential or agricultural uses or is vacant.

The Unified Zoning Code requires screening by fencing, evergreen vegetation or landscaped berms along the side and rear lot lines of nonresidential uses when those uses are adjacent to residential zoning.

CASE HISTORY: The site was annexed by the City of Wichita in 2000.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-20" Single-family Residential; single-family residences, church

SOUTH: "SF-20" Single-family Residential; single-family residences
EAST: "SF-20" Single-family Residential; vacant, Eberly Farms
WEST: "SF-20" Single-family Residential; single-family residences

PUBLIC SERVICES: 135th Street is currently a sand and gravel two lane arterial roadway. 21st Street is designated as a 4-lane arterial and is a paved road. Current traffic volumes are not available. No road improvement projects, other than those that will be required at the time of platting, appear to be planned for 135th Street. Neither public sewer nor water is currently available at this location. Capital Improvement Projects are scheduled in 2003 to extend water west ½ mile along 21st Street, and in 2005 to extend water two miles north, along 135th Street. Sewer service is expected to become available in June 2002. A lift station is required to extend and improve sanitary sewer service to northwest Wichita. Studies have indicated the need for a fire station in this general area. Locating a fire station in this location would improve service to northwest Wichita and near northwest Sedgwick County.

CONFORMANCE TO PLANS/POLICIES: The "1999 Update to the Wichita-Sedgwick County Comprehensive Plan" contains an objective that states that the community is to "promote the development of a comprehensive set of sanitary sewer systems that provide the most economic and efficient service possible." Convenience commercial centers (2-4 acres in size) are encouraged to locate at the corner of arterial intersections. Retail commercial uses should be located in a manner which provides convenient access to the public and which minimizes detrimental impact to other adjacent land uses. Public safety services are to be developed in a manner that provides residents with the highest quality and most efficient public services.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions and Protective Overlay:

Conditional Use

- A. Those parcels requiring a Conditional Use shall be developed and maintained in compliance with approved site plans and permitted uses listed on the approved site plan.
- B. Buildings on Parcel 4 shall be developed with an exterior of split face block or brick. If Parcel 3 is developed with a government service, it shall use exterior building materials similar to those used on Parcel 4.
- C. Prior to the issuance of a building permit, the applicant shall submit a landscape plan prepared by a Landscape Architect for approval by the Planning Director.
- D. Any violation of the conditions of approval shall declare the Conditional Use null and void.

Protective Overlay for the "LC" Zoned Parcels

- A. Development shall occur on these parcels that is consistent with the approved site plan.
- B. Building coverage shall be limited to 30% of parcel size (Parcel 1: 14, 916 sq. ft.; Parcel 2: 13,582 sq. ft.; Parcel 3: 15,360 sq. ft.) and a floor area ratio of 35%.
- C. Signage shall be monument type signs that are a maximum of 20 feet in height and 100 square feet in area. No temporary display signs are permitted, including the use of commercial flags, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting, off-site signs and balloons. Banners are also prohibited except they may be permitted during the grand opening.
- D. Lighting standards shall be architecturally similar and be a similar color and be limited to a maximum height of 14 feet.
- E. Buildings on Parcels 1 and 2 shall be developed with exterior building materials and colors that are consistent. If Parcel 3 is not developed with a government service, and is zoned "LC", then buildings built on Parcel 3 shall be developed with exterior architectural materials consistent with those on Parcels 1 and 2. Use of metal as an exterior facade is prohibited on all parcels. Exterior use of backlit canopies and neon or fluorescent tube lighting on buildings shall not be permitted.
- F. Prior to the issuance of a building permit, the applicant shall submit for approval by the Planning Director a landscape plan for all required landscaping prepared by a Landscape Architect that supercedes minimum code requirements by 1-1/2 times.
- G. If Parcel 3 is not developed with a government service, access along 135th Street should be limited to one drive shared by Parcels 1, 3 and 4.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. Surrounding property is zoned "SF-20" Single-family Residential. Many of the lots are developed with large-lot residential uses, some are vacant and some are used for agricultural uses. The character of this area is that of semi-rural large-lot residential uses that will soon abut urban scale development and experience transition development pressures that accompany new construction, increased density and intensity of uses.
2. The suitability of the subject property for the uses to which it has been restricted. The site is currently zoned "SF-6" Single-family Residential, which is one of the most restrictive zoning districts in the code. It would be atypical for "SF-6" zoning to remain very long at the corner of the intersection of two arterial streets once the corner has been annexed and urban services become available. More intense zoning is typically seen on property located at the corner of two arterials. The size of the lots to be zoned "LC" are well under the six acres that are typically zoned for retail commercial uses. The pump station and fire station would be acceptable buffer uses for the adjoining lots located to south. These two uses can also be approved without a zone

change.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The setbacks, fencing, landscaping and development controls applied to the application area should minimize any detrimental impacts to adjoining property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Plan" contains an objective that states that the community is to "promote the development of a comprehensive set of sanitary sewer systems that provide the most economic and efficient service possible." Convenience commercial centers (2-4 acres in size) are encouraged to locate at the corner of arterial intersections. Retail commercial uses should be located in a manner which provides convenient access to the public and which minimizes detrimental impact to other adjacent land uses. Public safety services are to be developed in a manner that provides residents with the highest quality and most efficient public services. This proposal is consistent with those goals.
5. Impact of the proposed development on community facilities: Traffic generation will increase on those sites zoned "LC" when contrasted with "SF-6" zoning. The fire station and pump station will enhance and provide service in areas under served or lacking in service which will result in a positive impact.

MILLER "The City of Wichita has purchased the application area, located on the southeast corner of 21st and 135th Street West. There are basically residential uses to the north and the northeast. There is a church further over; homes to the south and southwest and then ag uses there to the northwest and west.

There should be a copy of the site plan in your packet that would be easier to follow. They have split this basically square tract into four parcels. The first two parcels that have frontage on 21st Street are proposed to be rezoned for 'LC' uses and they have proposed a Protective Overlay, or at least restricted the uses to 'LC' uses except adult entertainment, group houses, group residential, halfway houses, correctional placement residences, private clubs, taverns, and drinking establishments.

They are also requesting 'LC' zoning on this parcel (indicating), which, it depends on what you do with it; but the City is currently thinking that this is a good location for a fire station and would be consistent with plans that have been proposed for expansion of the fire protection system. So they are asking for 'LC' on this, and if you grant the 'LC', then the fire station could be there as a government service by right as part of the 'LC' uses. If you think it is not appropriate for that parcel to be 'LC', then you need to grant a Conditional Use for a government service there. It is kind of an either/or thing.

Then the last parcel, on the southeast corner is the proposed site for a pump station. As you may well remember, when we had all of the public hearings about the northwest waste water treatment plant, that plant was sited in such a location that there needs to be a lift station to be at the lowest point in the service area to collect the gravity flow system and then pump it up to that brand new station. This would be one of those locations, and they are proposing to do that at this site. The building, as I understand it, would be constructed out of block or brick and would be operated, as I understand it, by electrical motors, except for the emergency generator that they would have in place for times when electric services were out.

On the site plan, you can see that they have limited access points at 135th Street. There are two in this location; and a joint access on 21st Street. They are showing considerable landscaping to the south and to the east. They also have increased setbacks along the south and east of Parcels 3 and 4. Parcel 3 would also have, if it is approved for 'LC', which is the fire station one, would have, if it is granted for 'LC', would have that list of prohibited uses; adult entertainment, group homes, group residential, correctional placement, private clubs, taverns, drinking establishments, drive-in or drive-through restaurants, convenience stores, service stations, car washes, auto repair or supply stores with overhead doors.

Staff is making some recommendations for some minor adjustments to those conditions. Those are found on Page 4 under the recommendation section. We have four specific recommendations on the Conditional Use portion and then we also have some recommendations on the Protective Overlay for the 'LC' parcels. I won't go into those unless you have specific questions about them. But we think that since this is a City project, we think that this would be appropriate with what we would expect to see at this particular location. We are recommending approval."

CARRAHER "Are there any questions for staff regarding this item?"

MCKAY "You are requiring platting, correct?"

MILLER "Yes."

MCKAY "So the egress and ingress will be taken care of at that point in time?"

MILLER "Yes."

MCKAY "Okay. You know in the northwest, we have this four corner commercial, so many acres, blah, blah, blah."

MILLER "That is the West side commercial policy."

MCKAY "Yeah. Is this going to be exempt from that?"

MILLER "We borrowed from that policy for some of the conditions of approval. The total site is only 2.19 acres, so it falls underneath the acreage size."

MCKAY "Well, I guess what I am saying is that if the City is going to use this for their purposes, then that shouldn't be counted as the total on the other three corners."

KROUT "In that study, the intersections that were identified for any special controls, just the ones along Maple, Central and 13th Street, along Kellogg but not along 21st Street, the idea was that the more major developments might find their way to 21st Street or to Kellogg and the limitations and the special controls would only be limited to the area between, so it is really not applicable. They did borrow a couple of the standards, but it is really not applicable."

PLATT "I had the same question as Mr. McKay, but wanted to be sure that you are suggesting to add to the conditions that it be re-platted?"

MILLER "Yeah. We intend that it be subject to platting."

JOHNSON "Dale, does the City plan to retain the ownership of these lots or do they plan to sell them?"

MILLER "I don't know that."

OSBORNE-HOWES "I am just curious. Oftentimes staff recommends some type of zoning buffer, be it neighborhood retail or office, something lower level so that you wouldn't have Limited Commercial right adjacent to residential, and I just wondered if they have a comment."

MILLER "No, I don't guess I do."

OSBORNE-HOWES "I really am curious. I don't understand having a Protective Overlay for the fire station and maybe for the pump station, but if we just say 'LC' to the whole corner and there is not buffering; and it really does run right up to some residential. I really would like to have a comment."

MILLER "On the site plan, it is awfully hard to see, but there is, I believe, a 20-foot landscape buffer along that south line, which is in excess of what we would require for anybody else."

OSBORNE-HOWES "Do you think that is sufficient?"

MILLER "Well, I think it certainly would go a long ways towards buffering."

KROUT "On the site plan, aren't there other restrictions, Dale? I can't read them, but I recall that there were other use restrictions on the parcel that would be incorporated into the Protective Overlay. Can you read what some of those are?"

MILLER "On Parcel 3 they are proposing a fire station, but they are also proposing 'LC' uses, except all of those things that I named off, which included the drive-through restaurant, the convenience store, service stations, car washes, auto repair, an auto supply store with overhead doors. Those are what they proposed, and then we placed on it that the signage restrictions, comments about lighting standards being similar color and limited to a maximum height of 14 feet that the exterior building materials and colors be consistent with each other and that if Parcel 3 is not developed with a government service and is zoned 'LC', then Parcel 3 shall be developed with exterior architectural materials, consistent with those on Parcels 1 and 2 and that the use of metal as an exterior façade is prohibited, and back lit canopies and neon florescent tube lighting is not permitted. We did add considerable conditions to that particular parcel."

MCKAY "But if this was Mr. Warren here doing this, wouldn't we require him to put a fence along the south side?"

MILLER "They will have to do a fence."

MCKAY "Okay, but that is not one of the requirements."

MILLER "That is a standard zoning requirement."

MCKAY "What do we do about across the street? Is there any kind of protection for the people across the street to the west?"

MILLER "Not any other than just the setback, which I can't read on this, but it looks like it is about 35 feet."

MCKAY "And are we requiring any landscaping to protect the single-family across the street?"

MILLER "We certainly can if that is something that you think is necessary. They do have to provide a landscape plan that would be consistent with the code and supersede Code minimums by one and a half times."

KROUT "That was one of the Far West Side recommendations that the landscaping in this area be one and a half times the minimum. So we have added to the landscaping, too."

OSBORNE-HOWES "And that would include the west side of the property?"

KROUT "Yes."

CARRAHER "Are there any further questions of staff? Thank you, Mr. Miller. Would the applicant like to speak to the item at this time?"

ROB HARTMAN "I am with Professional Engineering Consultants, here on behalf of the applicant. As Dale mentioned, there are four different parcels on this application. Parcel 2 is an existing house that right now is being leased out and will continue to be leased out for a while. But the City would like to be able to sell these commercial parcels in the future. At this time, they want to retain Parcel 4 for the pump station and Parcel 3 for a potential fire station, if needed.

We are in agreement with staff comments, and with the platting portions and the landscaping requirements. I will be happy to answer any questions."

JOHNSON "Mr. Hartman, do you know if the City plans to sell these lots, or are they going to retain the ownership?"

HARTMAN "Yes, the commercial lots they would like to sell in the future. Parcels 1 and 2 for sure and 3 if the fire station doesn't go on it. Parcel 3 would then be fore sale."

JOHNSON "But there are not contracts or anything on them?"

HARTMAN "No, no contracts on those at this time."

CARRAHER "Are there any further questions for Mr. Hartman? Thank you. Now we will move it to the gallery. Is there anyone in the audience who is here to speak in favor of this item? Is there anyone in the audience who is here to speak in opposition to this item. Seeing none, we will move it back to the Commission. What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood. Surrounding property is zoned "SF-20" Single-family Residential. Many of the lots are developed with large-lot residential uses, some are vacant and some are used for agricultural uses. The character of this area is that of semi-rural large-lot residential uses that will soon abut urban scale development and experience transition development pressures that accompany new construction, increased density and intensity of uses. The suitability of the subject property for the uses to which it has been restricted. The site is currently zoned "SF-6" Single-family Residential, which is one of the most restrictive zoning districts in the code. It would be atypical for "SF-6" zoning to remain very long at the corner of the intersection of two arterial streets once the corner has been annexed and urban services become available. More intense zoning is typically seen on property located at the corner of two arterials. The size of the lots to be zoned "LC" are well under the six acres that are typically zoned for retail commercial uses. The pump station and fire station would be acceptable buffer uses for the adjoining lots located to south. These two uses can also be approved without a zone change. Extent to which removal of the restrictions will detrimentally affect nearby property: The setbacks, fencing, landscaping and development controls applied to the application area should minimize any detrimental impacts to adjoining property. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Plan" contains an objective that states that the community is to "promote the development of a comprehensive set of sanitary sewer systems that provide the most economic and efficient service possible." Convenience commercial centers (2-4 acres in size) are encouraged to locate at the corner of arterial intersections. Retail commercial uses should be located in a manner which provides convenient access to the public and which minimizes detrimental impact to other adjacent land uses. Public safety services are to be developed in a manner that provides residents with the highest quality and most efficient public services. This proposal is consistent with those goals. Impact of the proposed development on community facilities: Traffic generation will increase on those sites zoned "LC" when contrasted with "SF-6" zoning. The fire station and pump station will enhance and provide service in areas under served or lacking in service which will result in a positive impact.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. Those parcels requiring a Conditional Use shall be developed and maintained in compliance with approved site plans and permitted uses listed on the approved site plan.
2. Buildings on Parcel 4 shall be developed with an exterior of split face block or brick. If Parcel 3 is developed with a government service, it shall use exterior building materials similar to those used on Parcel 4.
3. Prior to the issuance of a building permit, the applicant shall submit a landscape plan prepared by a Landscape Architect for approval by the Planning Director.
4. Any violation of the conditions of approval shall declare the Conditional Use null and void.

Protective Overlay for the "LC" Zoned Parcels

1. Development shall occur on these parcels that is consistent with the approved site plan.
2. Building coverage shall be limited to 30% of parcel size (Parcel 1: 14,916 sq. ft.; Parcel 2: 13,582 sq. ft.; Parcel 3: 15,360 sq. ft.) and a floor area ratio of 35%.
3. Signage shall be monument type signs that are a maximum of 20 feet in height and 100 square feet in area. No temporary display signs are permitted, including the use of commercial flags, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting, off-site signs and balloons. Banners are also prohibited except they may be permitted during the grand opening
4. Lighting standards shall be architecturally similar and be a similar color and be limited to a maximum height of 14 feet.
5. Buildings on Parcels 1 and 2 shall be developed with exterior building materials and colors that are consistent. If Parcel 3 is not developed with a government service, and is zoned "LC", then buildings built on Parcel 3 shall be developed with exterior architectural materials consistent with those on Parcels 1 and 2. Use of metal as an exterior facade is prohibited on all parcels. Exterior use of backlit canopies and neon or fluorescent tube lighting on buildings shall not be permitted.
6. Prior to the issuance of a building permit, the applicant shall submit for approval by the Planning Director a landscape plan for all required landscaping prepared by a Landscape Architect that supercedes minimum code requirements by 1-1/2 times.
7. If Parcel 3 is not developed with a government service, access along 135th Street should be limited to one drive shared by Parcels 1, 3 and 4.

MARNELL moved, **GAROFALO** seconded the motion.

CARRAHER "Are there any questions or commentary regarding the commentary on the motion on the floor? Seeing none, we will move to a voice vote."

VOTE ON THE MOTION: The motion carried unanimously (12-0).

OSBORNE-HOWES "Was that subject to platting?"

CARRAHER "Yes, I believe that was part of the motion. Marvin?"

KROUT "Yes."

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7. **Case No. ZON2000-00047** - Ruth E. Loudenslager (owner); Frank Pegg (agent) request a zone change from "SF-6" Single-Family Residential to "NO" Neighborhood Office on property described as:

Lot 13, Block C, Westview Addition, Township 27 South, Range 1 West, Section 21, Wichita, Sedgwick County, Kansas. Generally located 750 feet north of Maple on the west side of Ridge Road.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant is requesting "NO" Neighborhood Office on a 0.43 acre platted lot along the west side of Ridge Road located half-way between Maple and Douglas. The property is currently zoned "SF-6" and developed with a residence. The owner would like to convert the existing residence into an office.

The lot is located in the middle of a string of seven single-family homes. A restaurant, Outback Steakhouse, and a convenience store are located 325 feet to the south. The Outback was rezoned to "LC" Limited Commercial subject to a Protective-Overlay in July 1997, with the P-O providing solid screening and landscape buffering from the residential uses along Brunswick, the street to the west. Additional commercial uses developed at Maple and Ridge, include Lowe's on the southwest corner and a retail strip center on the northeast corner.

To the north about 325 feet, a State Farm Insurance office is located in a converted residence on the southwest corner of Ridge and Douglas. This property was rezoned "BB" office district in December 1983. Three single-family houses are located between the application area and the State Farm Insurance office.

The property across Ridge to the east is zoned "SF-6" but developed with the Maple Ridge Apartments, a 168 unit garden apartment complex. It is part of DP-42 Willow-Esque Residential C.U.P.

The proposed conversion of the property to office use would entail providing off-street parking. Compatibility setbacks would not be required if the conversion does not involve new construction. Similarly, the Landscape Ordinance would not be triggered unless the increased value after conversion to the residential use was more than 50 percent of the original improvements. The property has substantial landscaping on-site and probably complies with landscaping requirements that would be required of a major expansion or remodel.

CASE HISTORY: The property was platted as Westview Addition on May 16, 1952.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6," "GO"	Residences, office
SOUTH: "SF-6," "LC"	Residences, restaurant, convenience store
EAST: "SF-6"	Apartments
WEST: "SF-6"	Residences

PUBLIC SERVICES: The property is located along Ridge Road, a four-lane arterial street. The traffic count for 1997 was 20,201 cars per day (ADTs) between Maple and 2nd Street North. The projected traffic volume for 2030 is 26,490 cars per day. No street projects are included in the C.I.P. The property has one drive entrance onto Ridge Road. The existing half-width right-of-way for Ridge is 50 feet.

Public water and sewer services are available.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" of the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this property as "low density residential."

"Office Locational Guidelines" of the Comprehensive Plan include (1) being located adjacent to arterial streets; (2) having local, service-oriented offices incorporated within or adjacent to neighborhood and community scale commercial development, and (3) having low-density office use as a transitional land use between residential uses and higher intensity uses.

RECOMMENDATION: The purpose of the "NO" Neighborhood Office district is to accommodate very low intensity office development generally appropriate near residential neighborhoods. Since the property is shown for "low density residential" on the Comprehensive Plan and is surrounded on all sides by "SF-6" zoning, the proposed rezoning does not seem to fit the guidelines recommended for "NO" uses. However, the character of other nearby land uses such as the apartments to the east and the office to the north, coupled with its location along a major arterial in proximity to the intersection with another arterial, argues that small-scale office use with a residential character may be a reasonable alternative to single-family use. So long as the property maintains a residential design, provides ample compatibility setbacks and landscape buffers, and locates the parking to the rear of the building, the effect of an office use on adjacent residences should be minimized.

Based on these considerations and upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following Protective Overlay.

1. The property shall be developed and/or redeveloped with a building that has a residential character, and that includes brick, masonry, wood or composite siding; a double-pitched roof with a minimum vertical rise of 4 inches for every twelve inches; and a maximum height of 25 feet.
2. Freestanding signs shall be monument-type with a maximum height of 8 feet.
3. The property shall be restricted to one point of access onto Ridge Road, located along the northern property line. In the event the adjoining property on the north is rezoned for non-residential use, these two lots shall share one point of access.
4. Lighting shall conform to lighting standards in Sec. IV-B.4 of the Unified Zoning Code and be limited to no more than 14 feet in height.

5. Landscaping shall be provided that is equivalent to a landscaped street yard and parking lot landscaping and screening along Ridge Road, and a buffer along the property lines adjoining a residential district, as required in the City of Wichita Landscape Ordinance. A Landscape Plan shall be submitted to the Director of Planning for approval prior to the issuance of a building permit.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property adjoining the application area is zoned "SF-6" and developed with single-family residences. The property across Ridge is zoned "SF-6" but developed with garden apartments. There are commercial uses 325 feet to the south, and a similar office-type use 325 feet to the north.
2. The suitability of the subject property for the uses to which it has been restricted: The property could continue to be used for a single-family residence.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: So long as the property is developed with strong site development requirements to mitigate the impact of parking, lighting, and maintain the residential character of the structure, the impact on surrounding residences should be reduced. The effect of approving this request for "NO" might be to encourage adjacent residences to seek a similar approval.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is not in conformance with the Wichita Land Use Guide. It is in conformance with the purpose of the "NO" district as a very low-intensity office use that is compatible with nearby residential use, so long as site design compatibility requirements are included in the approval.
5. Impact of the proposed development on community facilities: The main impact would be to increase turning movements at the mid-block location on Ridge Road. Planning for future access management as this frontage redevelops will help minimize the number of traffic conflicts and accidents.

GOLTRY "The applicant in this case wants to convert an existing residence into an office. You can see that this is zoned 'SF-6' and that there are three houses remaining on the north and three houses remaining to the south of the existing house that is requested for "NO" Neighborhood Office. I will point out, though, that there are a lot of different types of land uses in the area. There is the Outback Steakhouse, a convenience store, and Horton's and Lowe's. We have another convenience store, and a retail strip center. The Willowesque C.U.P. shows up as 'SF-6', but it is their multi-family parcel that has 168 apartment units on it. To the north, we have a very similar type of activity already in existence on the corner of Douglas and Ridge. It is an office that was zoned in the 1980s, a State Farm office.

The property is located along Ridge Road, as we have seen, and they have one current existing drive. It is recommended as low-density residential on the Comprehensive Plan; however, the purpose of 'NO' Neighborhood Office is to provide a very low intensity office development, generally appropriate near residential neighborhoods. We think, considering the intensity of land-uses in the surrounding area, even though it is sandwiched in-between a few residences to the north and south, the 'NO' Neighborhood Office would be an appropriate land use so long as they provide ample compatibility setbacks and landscape buffers to the adjacent residential property to the north, south and to the west. We have recommended approval with a Protective Overlay with those characteristics of residential design; a limitation on the height of the free-standing sign, one point of access on Ridge Road, and for it to be situated so that it can be doubly accessed with the lot to the north, should the lot to the north develop with a similar type office use in the future; lighting standards; and landscaping equivalent to what would be required by the Landscape Ordinance. I point that out because since the house is already existing and they are just planning to do a remodeling, they might not come under landscaping provisions unless it is incorporated as one of the requirements.

I understand that at the D.A.B. meeting on Monday night, that voted 10-0 to recommend approval and the one person who spoke's concern was related to having adequate landscaping on the west side of the property. I believe the applicant is here, and I will stand for questions."

CARRAHER "Are there any ex parte disclosures that need to be made at this time? Seeing none, are there any questions for staff regarding this item?"

PLATT "Is parking allowed on Ridge Road?"

GOLTRY "No."

CARRAHER "Are there any other questions of staff? Thank you, Ms. Goltry. Would the applicant like to speak at this time?"

FRANK PEGG "I reside at 1322 Sand Plum and I am the agent for Ruth Loudenslager, who is also here. As I said in the meeting the other evening, this building, or the home that you saw in the pictures is an all brick home on four sides. We don't expect to, nor will we change the exterior of the home at all. It will stay looking residential. There is a little bit of work to do inside to make the offices.

I am going to reside in this as an office. My business is a technical temporary help agency. There are only four of us in the office. We do most of our business by computers and telephones. There is very little or no traffic except an occasional applicant that might come by. For the most part, it is done by resumes, phones and those kinds of things. So there should not be any major impact from our standpoint on the neighborhood."

CARRAHER "Are there any questions for the applicant?"

GAROFALO "Sir, where would you have your parking? You said there were four people."

PEGG "Yes. The home is set back now 50 feet from the property line. It is 64 feet from the sidewalk, it sets back 64 feet. Because of the impact that might happen if we tried to put the parking in the rear, we expect to take this piece (indicating) which is wide enough to the property line and concrete that, bringing the traffic in the driveway and then turning right and parking there. That would accommodate six parking spaces as well as the two that the garage accommodates and that meets the requirement of eight spaces, as I understand it."

CARRAHER "Are there any other questions of the applicant? Okay. Seeing none, thank you, Mr. Pegg. Is there anyone in the gallery who wishes to speak in favor of this item? Anyone who wishes to speak in opposition? Okay, we will bring it back to the Commission. What is the pleasure of the Commission?"

MCKAY "I have a question of staff. I am looking at this happening in the middle of residential presently. Are we creating the start of a run for Neighborhood Residential on this street by approving this in the middle? If so, the driveways onto Ridge Road and the parking becomes a problem like on East Central."

KROUT "I think we do recognize that there probably will be more zoning in this vicinity and that is why one of the recommendations is to plan this so that the driveway can be shared in the future with future office, which help if and when it occurs."

MCKAY "So staff has actually looked into this and recognize that this is probably going to develop?"

KROUT "Yes. We think this is probably going to continue to develop in the same way."

MCKAY "Thank you."

CARRAHER "Are there any further questions or commentary with regard to this item?"

OSBORNE-HOWES "I just want to be pointed to where it talks about sharing. Oh, I see it, never mind."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (1. The zoning, uses and character of the neighborhood: The property adjoining the application area is zoned "SF-6" and developed with single-family residences. The property across Ridge is zoned "SF-6" but developed with garden apartments. There are commercial uses 325 feet to the south, and a similar office-type use 325 feet to the north. The suitability of the subject property for the uses to which it has been restricted: The property could continue to be used for a single-family residence. Extent to which removal of the restrictions will detrimentally affect nearby property: So long as the property is developed with strong site development requirements to mitigate the impact of parking, lighting, and maintain the residential character of the structure, the impact on surrounding residences should be reduced. The effect of approving this request for "NO" might be to encourage adjacent residences to seek a similar approval. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is not in conformance with the Wichita Land Use Guide. It is in conformance with the purpose of the "NO" district as a very low-intensity office use that is compatible with nearby residential use, so long as site design compatibility requirements are included in the approval. Impact of the proposed development on community facilities: The main impact would be to increase turning movements at the mid-block location on Ridge Road. Planning for future access management as this frontage redevelops will help minimize the number of traffic conflicts and accidents.) I move that we recommend to the governing body that the request be approved, subject to the following conditions of the following Protective Overlay:

1. The property shall be developed and/or redeveloped with a building that has a residential character, and that includes brick, masonry, wood or composite siding; a double-pitched roof with a minimum vertical rise of 4 inches for every twelve inches; and a maximum height of 25 feet.
2. Freestanding signs shall be monument-type with a maximum height of 8 feet.

3. The property shall be restricted to one point of access onto Ridge Road, located along the northern property line. In the event the adjoining property on the north is rezoned for non-residential use, these two lots shall share one point of access.
4. Lighting shall conform to lighting standards in Sec. IV-B.4 of the Unified Zoning Code and be limited to no more than 14 feet in height.
5. Landscaping shall be provided that is equivalent to a landscaped street yard and parking lot landscaping and screening along Ridge Road, and a buffer along the property lines adjoining a residential district, as required in the City of Wichita Landscape Ordinance. A Landscape Plan shall be submitted to the Director of Planning for approval prior to the issuance of a building permit.

MCKAY moved, **JOHNSON** seconded the motion.

CARRAHER "Are there any questions or commentary regarding the motion on the floor? We will move to a voice vote."

VOTE ON THE MOTION: The motion carried with 12 votes in favor. There was no opposition. Platt abstained.

CARRAHER "We have an item that has been pulled. I will yield the floor to Mr. Krout with regard to that."

KROUT "If anyone is here early for this, and we will announce it again at 2:30 when the item is heard, Agenda Item No. 10, which is the Conditional Use to allow vehicle and equipment sales outdoor on Limited Commercial property at the northeast corner of Central and Rock Road, that case has been withdrawn by the applicant and will not be heard this afternoon."

8. **Case No. CON2000-00043** - G. Marc Myers, James R. Maetzold and Howard K. Sherwood (owners); MSM Leasing Company (Howard K. Sherwood, applicant) request a Conditional Use to permit a medical waste transfer station on property described as:

The North 300 feet of Lot 7, Block A, Royal Industrial Addition, Sedgwick County, Kansas. Generally located on the northwest corner of MacArthur and West Street.

CARRAHER "Are there any ex parte disclosures that need to be made before we begin this item?"

JOHNSON "I was contacted by a neighbor, but I didn't learn anything. He mainly asked some questions. I told him about the hearing."

DALE MILLER, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: Stericycle, a company that specializes in managing medical waste, is seeking a Conditional Use permit to operate a "medical waste transfer station" on property located approximately 458 feet north of MacArthur and west of West Street. The site is part of Lot 7 of the Royal Industrial Addition. (A lot split or re-plat will need to be completed to comply with Subdivision Regulations.) The company collects medical waste from various sites around the area. The waste is then transported to this location for consolidation and shipment to an approved disposal site out of town. No waste is disposed of at this site. A total of three trucks are currently assigned to this location; two route trucks and one tractor-trailer rig.

The application area is 1.5 acres in size and is zoned "LI" Limited Industrial. The site is developed with a single building today (3,750 sq. ft.). The building is used as an office, storage and maintenance facility. A chain link fence surrounds most of the site. A single curb cut along West Street provides access. The parking area is surfaced with asphalt or gravel and occupies most of the site not covered by the existing building. Four striped parking stalls are identified on the site plan.

According to K.S.A. 28-29-27 "medical services waste" is defined as "those solid waste materials which are potentially capable of causing disease or injury and which are generated in connection with human or animal care through inpatient and outpatient services. Medical services waste shall not include any solid waste which has been classified by the secretary as a hazardous waste under K.S.A. 1982 Supp. 65-3431 and any amendment thereto, or that is radioactive treatment material licensed under K.S.A. 1982 Supp. 48-1607 and regulations adopted under the statute."

Planning staff contacted both city and county solid waste officials to see if this use needs to comply with adopted solid waste transfer station regulations and guidelines. The response was that since this is a very specialized use with a relatively small waste stream and a small number of contractors it was not necessary to apply household solid waste rules for this type of application.

Surrounding land is zoned "LI" Limited Industrial or "LC" Limited Commercial. Surrounding uses include: trucking, auto repair, vacant or place of worship

CASE HISTORY: The Royal Industrial Addition was recorded in March of 1976.

ADJACENT ZONING AND LAND USE:

NORTH: "LI" Limited Industrial; vacant

SOUTH: "LI", Limited Industrial; trucking

EAST: "LI", Limited Industrial and "LC", Limited Commercial; auto repair and towing

WEST: "LI", Limited Industrial; trucking

PUBLIC SERVICES: West Street is a four-lane facility carrying an average daily traffic volume of 7,528 vehicles. Public sewer and water services are available.

CONFORMANCE TO PLANS/POLICIES: The 1999 "Wichita Land Use Guide" recommended land use map depict this site as appropriate for "industrial" uses. Industrial location guidelines indicate that industrial uses should be located in close proximity to: support services, major arterials, city truck routes, belt highways, utility trunk lines, rail spurs, airports and as extensions of existing industrial uses. Industrial uses should not feed directly into local streets in residential areas; and they should be located away from existing or planned residential areas, and sited so as not to generate industrial traffic through less intensive land use areas. The "Unified Zoning Code" in 1996 established solid waste transfer stations as uses conditionally permitted in the RR Rural Residential, LI Limited Industrial and GI General Industrial districts.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. Permitted uses shall be restricted to those permitted by-right in the "LI" Limited Industrial district plus a medical waste transfer station. Only medical wastes (as defined in K.A.R. 28-29-27) may be received or handled at this location. No other types of solid waste may be accepted or processed at this location.
- B. A lot split or re-plat of this property shall be completed prior to commencing operations.
- C. The applicant shall obtain all applicable permits prior to commencing operations on this site, including, but not limited to, compliance with K.A.R. 28-29-27.
- D. The transfer of medical waste shall take place inside an enclosed building
- E. The site shall be developed in general conformance with the approved site plan.
- F. Any violation of these conditions shall render this Conditional Use Permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. Surrounding land is zoned "LI" Limited Industrial or "LC" Limited Commercial. Surrounding uses include: trucking, auto repair, vacant or place of worship. The character of the land uses in the area is industrial and heavy commercial.
2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "LI" Limited Industrial. This district permits nearly all uses except residential and heavier industrial uses. The site could be used for activities already permitted. However, the conditions placed on the property by this application adequately protect adjoining property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the Conditional Use Permit will not detrimentally affect nearby property owners since nearly all the adjoining property is zoned the same as the applicant's property, and the conditions applied to this request ensure that the requested use will not negatively impact nearby property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The 1999 "Wichita Land Use Guide" recommended land use map depict this site as appropriate for "industrial" uses. This request is compatible with adopted plans.
5. Impact of the proposed development on community facilities: None identified.

MILLER "This is for a Conditional Use to permit a medical waste transfer station. The property is located north and west of MacArthur and West Street. There are industrial and commercial type uses in the area. There is either a Buddhist or Hindu Temple, a place of worship, across the street in this location. That is the only non-commercial or industrial use that I can identify in the near area. The site is 1-1/2 acres in size, approximately. It is zoned 'LI' Limited Industrial. It is my understanding that the applicants operate a medical waste transfer station on Ohio Street and for whatever reason they want to move to this location. When they went to the Health Department to fill out the appropriate paper work for making the transfer, they were directed to us to make sure that they were zoned properly, hence the case that you are hearing today.

There are, in addition to whatever Conditional Use restrictions that we place on them, they are regulated by the state and in fact the third paragraph on Page 2 of the staff report defines what medical waste is. They currently have two collection trucks and one vehicle that they use to haul the waste. Apparently, the typical scheme is that the route trucks go pick up

the waste and bring it back to this location. It is consolidated and then shipped to Kansas City, where they have an incinerator. This company, when I talked to them on the phone, they said they operate in 32 other cities. The length of time that the material is typically on site, they say, is approximately 24 hours. One of the concerns from one of the neighbors was that it not be done in a packer truck like picks up the regular garbage from your house. It is my understanding from talking with John Davis at the Health Department that that is prohibited by health regulations, because the material is boxed up, taped up and packaged in such a way that if you use the regular packer truck, it would break those seals, and that is what they don't want to happen. That is not an issue, but this one particular person wanted to make sure that you were aware that he didn't want packer trucks on the site.

Now, when you go to the conditions of approval that we have recommended, staff is recommending approval of the request. I didn't put that particular restriction in there because the Health Department already has it, so I didn't think it was necessary to put it in this particular set of conditions. As you can see on Item A, what we are recommending is approval, but that the only waste that could be handled here is medical waste, no solid waste of any other kind. They will need to replat or lot-split this particular tract because this is one large tract that as far as I can tell, there has not been a lot split done. So for the sale to go through, they will need to lot-split that particular parcel off. They will need to obtain all applicable permits from anybody else that they need to have in order to operate the place legally, and that the transfer of medical waste take place inside an enclosed building. The same individual that had the concern about the packer trucks also wanted it to be done inside and the applicant, at least as I understand it, didn't object to this requirement, so we put it in there.

It would have to be developed in conformance with the site plan, which looks something like this. The building is currently there today. That is the existing building today. There are parking spaces here, the site is entirely enclosed by a fence and there are overhead doors on the north end of this particular building. With that, I would answer questions."

CARRAHER "Are there any questions of staff regarding this item?"

JOHNSON "Dale, this property is presently in the County?"

MILLER "Yes, it is part of the annexation area that was in, then it was out, and then it was in, and now it is out."

JOHNSON "Do you know the status of that?"

MILLER "I know that there has been some sort of an appeal or something filed, and according to City Law, we are waiting to hear whatever the judge is going to do with it."

JOHNSON "Do you remember while you were out there whether you saw a sign posted?"

MILLER "I was out there pretty early. It would have been before the thirteen day time frame."

CARRAHER "Are there any further questions of staff?"

GAROFALO "If you would clarify for me, this is an operation already going on?"

MILLER "Not at this location, as I understand it. They are on Ohio and they want to move from Ohio to this location."

CARRAHER "Any further questions? Thank you, Mr. Miller. Would the applicant like to speak at this time?"

WADE VAN ZEE "I am the area manager of environment, safety and health for Stericycle. Just to bring you up to date on why we are looking at moving to this location--you are all familiar with B.F.I., the garbage hauler. We were part of B.F.I., dealing with medical waste. B.F.I. was bought out by a company called Allied Waste in 1998. Allied Waste then did not want to deal with all of the aspects of dealing with medical waste, so they sold us to another company called Stericycle, Inc.

All of our employees that work here in Wichita, most of us worked for B.F.I. prior. We have an operating agreement to operate on the same site we are on today until such time that we can find another location here in Wichita. That is the reason we are asking for the Conditional Use permit so that we can get off of the property currently with B.F.I., which I think is now owned by Waste Connections. That is the reason we are looking to move to this other piece of property.

We have been operating in the City of Wichita for a minimum of 6 years now. All of our medical waste that we pick up is from doctors' offices, dentist offices, hospitals, tattoo parlors, some schools, manufacturing companies and that type of business. All waste is packaged in reusable containers and also other approved containers. I have pictures of those if any of you would like to look at those types of containers.

We are governed, like Dale said, by the State of Kansas. We are also governed by the United States Occupational Safety and Health Administration (OSHA) and also the Department of Transportation regulations. We pick up all of our waste in straight trucks. When these straight trucks come back to the yard, they are backed up to a trailer where they are off-loaded onto another trailer. After that time that those are full, they are then transported to our facility in Kansas City, Kansas, which is one of 32 treatment facilities in the United States that we have to treat this medical waste. Is it appropriate for me to go over the recommendations?"

CARRAHER "You have 7-1/2 minutes remaining to speak over whatever you want to speak on."

VAN ZEE "Okay. There are only two recommendations that I would like to address. One is No. A, about no other types of solid waste may be accepted or processed at this location. Currently, at this location on South West Street, we are leasing it with another company called Automated Waste Solutions. They are a solid waste subscription hauler. We would like a clarification on this. We are not planning on accepting any other type of solid waste. We are only in the medical waste business and there is a big difference between solid waste and medical waste. Also the difference between a solid waste transfer station and a medical waste transfer station is your solid waste transfer stations are coming in and dumping this waste onto the floor just like probably a kid's room would look. It is just all over. Before it is then put into another truck or transfer vehicle.

What we are planning on doing is all of our containers are containerized much like your household garbage in plastic or a cardboard container. What we are planning on doing is bringing this waste back to this property where it will be backed up to a trailer and offloaded by hand and stacked into this trailer. So we would like clarification on solid waste if that just means our particular company or is that dealing with the lot itself.

The other item we would like to address would be 'the transfer of medical waste shall take place inside an enclosed building'. Like I mentioned a second ago, a solid waste transfer station I can clearly understand why you would want it to be in an enclosed building with wind, rain and etc., where when we are backing up our route trucks into a trailer, we barely have a foot and a half space in between our tractor-trailer and our route trucks. I have pictures here of those also, if you would like to look at those as well. Unless there are questions, I think that is all I may like to speak to."

CARRAHER "Are there any questions for the applicant in regards to this item?"

JOHNSON "I have a couple of questions. Basically, a route truck is about the size of what?"

VAN ZEE "It is much like a moving van. It is a straight truck--it has a 22 to a 26 foot box truck."

JOHNSON "And then this is loaded into like a 45 foot truck?"

VAN ZEE "A 48 or 53 foot trailer."

JOHNSON "In reading the staff report, seeing you are going to do this inside, no bigger than the building is, I was confused as to how that was going to work."

VAN ZEE "I should have mentioned this before. Since we are leasing this with this other company, the only part of the building that we have access to is an office and restrooms. The other company is using it for storage and for the maintenance of their trucks. So really, all we have an option to is a little bit of the office space and the lot to park our trucks and trailers on. So we don't have access to using the building."

JOHNSON "That is my second question. You presently have vehicles that are there?"

VAN ZEE "They are empty vehicles that we are storing there just to get them off of the other property because we have been getting pressured from B.F.I. to get off of their property."

JOHNSON "Do you know if there was a sign posted on this property?"

VAN ZEE "Yes, there is. I personally picked it up from Mr. Miller."

JOHNSON "Do you know where it is posted?"

VAN ZEE "Yes, I posted it. It was raining that day and I posted it right next to the gate with cable ties all the way around it."

JOHNSON "Do you know if it is still there?"

VAN ZEE "That I am not for sure of. I haven't been there this morning. I just traveled in today."

JOHNSON "I live in that area and I have never seen it posted, so I didn't know. But you are presently not working there as far as transferring this?"

VAN ZEE "No. Our employees are using that as an office, but we are doing all of our transferring and everything up on the former property. Like I said, we are getting pressured to get off of their property as soon as it is feasible."

PLATT "Sir, I just want to be sure I am understanding you. You are requesting that we eliminate Item B in the recommendations."

VAN ZEE "Yes, or modify it. Yes, we would like to delete it."

MARNELL "Are you doing this transfer currently inside of a building?"

VAN ZEE "No. It is outside of a building. In the State of Kansas, the Kansas regs are probably 3/4 of a page long. In the State of Illinois, that I am operating out of, the regulations are much thicker and there are many more regulations that pertain to transfer stations and etc. In the State of Kansas, you can actually dispose of medical waste in a permitted landfill. A lot of hospitals do that right now. I don't know about here in Wichita, but I know in Salina that this waste is put into a large roll-off where it is taken to a landfill.

A lot of our customers that we accept our medical waste from, it is mainly a liability issue for hospitals and doctor's offices. They don't want to put it into their solid waste container out back because it is a liability issue. I just want to clarify that."

MARNELL "Thank you."

CARRAHER "Seeing none, thank you, Mr. Van Zee. Is there anyone here in the audience to speak in favor of the item?"

JOHN SHERWOOD "I live at 9630 Clubhouse Court. I am here representing MSM Leasing Company, who is the owner of this property. We have no objections to this, but I do, in the staff comments, have an objection with Item B. This property is not being sold. It is still being retained under MSM's ownership. There has been a fence put around the property, and of course the property that is in red up there is the property that we are discussing, but MSM owns the rest of it and has leased the back portion to the owner of the property to the south. So we would like that portion removed because we don't want to have to replat this. Are there any questions?"

CARRAHER "Are there any questions for the speaker? Seeing none, thank you, sir. Is there anyone else in the gallery who is here to speak in favor of this item? Is there anyone in the gallery who is here to speak in opposition to the item?"

MARK SPRINGS "I live at 3842 South West Street. I own the property that would just be diagonally across West Street, Country Pawn and Antique, which is next to the Buddhist Temple. My friend from the Buddhist Temple, I want to kind of help, too. He speaks only broken English.

Our concerns about the property, and we don't, in any way want to deny anybody's right to do what they want to do with their property. There are certain concerns. One is that we have the YMCA which came at I-235 and the bypass area off of Meridian. There is a proposed Wendy's to be added down at the corner of I-235 and the bypass. You can't see it on your map. It is going to come in. That area is starting to kind of shift into a 'GC' or 'LC' area and less industrial. I notice that on this it says it is four-lane. It is actually only accessed by two lanes. There are only four lanes at the corner of MacArthur and West Street for about half a block. When I begin to rezone my property, they wouldn't let me put in two drives, which I needed for my business for semis to turn around because they said they didn't want to have happen on our end of West Street what happened on West past Kellogg down to the north end of West Street, which has so many driveways.

So we are a little concerned about some of the driveway issues. I wouldn't have any problem with a Conditional Use permit, but I would like to understand what the process by which if they do not follow their process. Somebody asked a question about the inside truck. I knew there was no way you could put those trucks in there. I have been seeing those vehicles backed up to the other vehicles, and I knew there was no way they could do that transfer inside that building unless they could cut another door in the other end of the building. But it looks like to us that they are already doing business over there.

Also, our concern is, of course, for any odors. We are concerned, because we are hoping that the corner properties over there may end up being developed as a Wendy's or a MacDonald's. There is D&D rental, which is a retail rental business, which is just outside in the County. We are just in the process of going in and out of the annexation process. It has been through twice. But we are hoping that that will also kind of become a commercial retail area like so many other corners. So some of those kind of properties are starting to kind of concern us. If the MAPC would continue to look at that as an industrial place where they would put waste transfer stations. It concerns us, because we are businesses that are looking at long-term operating commercial businesses, such as retail and things like that. The corner, down here at West Street and MacArthur, when you look right here, (indicating) at MacArthur and West Street, you have four lanes for just a little ways and then it becomes two lanes. It is not four lanes like it says in the report.

Also, I have never seen a sign out there. I don't know how the zoning sign looks, but I had a big sign in front of my place when I went through the process of getting my place rezoned. I went with all of the neighbors in the entire area and talked to them about what I was doing. Our concerns, when I have talked to the people in the Buddhist Temple and all, is what guarantees do we have that 1) there is not going to be waste on the ground. When I saw that you wanted the transfer from the truck into the inside, it made me feel a lot better. Now I find out that they are asking to have that out. I think what is happening is that the folks on Ohio don't want to continue to do business with the medical waste thing, so they are sending it out here to an industrial area. Basically, they are renting a plot of ground to do their transfer. They obviously don't have access to the whole building, so they are trying to find a place to put it, which is fine. We don't really care, but we are concerned about making sure that there is some way to pull their Conditional Use permit if they start creating odor; if they start bringing lots more trucks in than they ever said they would, because I think there are more trucks right now than they said. They told me two or three trucks and I'll bet you there are a lot more.

We are concerned about some of those issues. The driveway is right across the street from the Buddhist Temple. They bought several acres of land and they spent a lot of money putting in new trees, and it is beautiful. They are great customers of mine and friends of mine. I am sure that they don't want to have a waste facility across the street from them.

The other neighbors came over to talk to me and said they just found out about the hearing. I am sure you guys hear that sometimes people don't get notified of the hearings, but I think the signage has been a problem. The signage is what notifies us more than the letters. I had some employees watch my place so I could come down here today because I never saw the sign. One of the other neighbors came and told me. We are concerned that you would make this at least very conditional and put some teeth in it so that you can remove their operating parameters if they violate what they say they are going to do there. Thank you very much."

CARRAHER "Are there any questions?"

BARFIELD "Sir, you mentioned that you have seen trucks back there, so you think this transferring is already taking place?"

SPRINGS "We think they are already doing business there, yeah. We can't prove it, but that is what I think and it is what the other neighbors think. They are definitely semi trailers and there are vehicles parked backed up to them. And they have Thermo-King units on the front. I don't know what you would need to keep cold over there if it is just regular waste. I know what Thermo-Kings are. I own some semis so I am familiar with some of that."

BARFIELD "Are there any other questions for the speaker. Seeing none, thank you, sir. Is there anyone else in the gallery here to speak in opposition to the item? Yes, sir?"

JOHN NEWMAN "I live at 4050 South West Street, which is the first house south of this business you are speaking of. I see trucks going in and out of there all of the time, many of them, and there is a number of enclosed packer trucks parked in that area today. If they aren't using them for this compact waste, they should not be there, in my feelings. I am like this other fella, we don't know what is going to happen when they start doing this. And after it has started, it is out of your hands unless you have something in regards to stop it."

CARRAHER "Are there any questions for the speaker? Thank you, sir. Is there anybody else in the gallery who is here to speak in opposition to the item? Seeing none, the applicant has two minutes for a rebuttal if they care to take advantage of that."

VAN ZEE "To answer the gentleman's questions, the garbage trucks and the packer trucks you referenced, those are the other company that we are leasing that property with, Automated Waste Systems. The other trucks that we have parked there, the ones that are backed up to each other, we store our reusable tubs and our cardboard containers that we deliver to our customers on some of our other vehicles. So all of those trucks there are empty right now. We have two route trucks and we have one tractor-trailer. If there are any more, those are the ones that we are leasing because of doing repairs and what not. So the other trucks that are on the property are the other company doing business and any trucks and tractors that are backed up to each other right now are off loading supplies that we may deliver to another customer. Once these trailers deliver the medical waste to our Kansas City facility, and clean tubs are put back onto the trailer and any boxes that need to be delivered to customers, which is an every day process are put back onto these trailers."

So right now, we are merely taking off supplies onto one trailer. Since we cannot utilize the building, which would be a great place to keep our supplies stored, so that is what we are currently doing, to answer their questions. Thanks."

CARRAHER "Are there any other questions for the applicant? Thank you. We will move it back to the Commission. What is the pleasure of the Commission?"

JOHNSON "I need to ask staff if there is a solid waste transfer station operating there now, and is that permitted? Do they not have to be permitted?"

MILLER "That is zoned 'LI'. If they are transferring waste, then they are not properly zoned. This is the first I have heard that there is another business on this location. I feel a little bit blind-sighted by the applicant and the property owner for not providing that kind of information as part of the deal initially. That would have impacted the way I would have written the way I would have written the report, and knowing that the office building was not available also would have impacted the way I would have responded."

BARFIELD "My question is for staff also. Why was Item D put in there?"

MILLER "Because of the fact that I had a property owner to the south who was adamantly opposed to this request, saying that if we could get the guarantee that it would be done in an enclosed building, then he wouldn't be opposed to it. I called the applicant and talked to Mr. Van Zee about it and he said that he had done that at other places, but he did express reluctance, I guess, and I said that I was going to make it part of the conditions of approval and we will see what happens here today."

GAROFALO "I have a staff question also. Does the County or the City, or anybody, has any regulations regarding medical waste and how it is picked up and transferred?"

MILLER "The City/County Health Department does regulate. They are the enforcement arm of KDHE, if you will. So there are local regulations and KDHE regulations. We did contact both Susan Erlenwein of the County and Joe Pajor of the City in terms of should their solid waste committees review this application, and they felt like it was so specialized and that there were so few players that they didn't need to see this particular application."

GAROFALO "But do we have any idea what the Health Department's regulations regarding this kind of stuff is?"

MILLER "I received the regulations and reviewed them, but I didn't put any of that in the staff report."

GAROFALO "Would any of it relate to how this is done, whether it should be done indoors or outdoors or how it should be handled. Is there anything in there?"

MILLER "I don't believe there was a requirement for it to be indoors as part of the regulation. I did talk to John Davis with the Health Department about whether he was okay with that, and he indicated that that was an appropriate thing to put on here. But I don't believe there was a requirement for it to be indoors, but I could be wrong. I just looked at it for one time. John was going to be here, but he was sent to a conference in Denver and he had to leave."

PLATT "I would like to hear from the Health Department in terms of their recommendation as to whether or not we should require the transfer to be unendorsed before I want to vote on not requiring it."

MILLER "Well, as I indicated, I did talk to John Davis and he indicated that that was okay with him."

PLATT "Indoors was okay."

MILLER "Yes."

PLATT "Did he say that outdoors was okay?"

MILLER "I guess I didn't ask him."

PLATT "That is my point. I guess I would like to have a comment on that before I vote on this."

OSBORNE-HOWES "I have a question for Mr. Miller. You said that you got blindsided and that this might have changed your report. Would this have caused you to not approve it or to write different conditions?"

MILLER "I think it would have been different conditions because it is not clear to me how we can separate out a requirement that you not have any other solid waste and how that is to be enforced by the Code Enforcement folks if there is another solid waste handler on the same site."

MOTION: That the case be deferred for four weeks to give staff time to work things out.

MCKAY moved, **OSBORNE-HOWES** seconded the motion.

BARFIELD "I have a couple of questions. This is an ongoing business. They are in operation now. Are they doing it inside or outside of the current location?"

MILLER "You will have to ask the applicant."

BARFIELD "Sir, could you answer that question?"

VAN ZEE "Currently, and for the past 6 years, it has been done outside from back to back."

BARFIELD "So therefore it would appear to me that they are operating in compliance, and that would settle the Health Department issue."

CARRAHER "Are there any questions or commentary over the motion on the floor?"

MCKAY "The thing is...the reason I made the motion to defer this, is this is a single purpose by the way the motion was made. I am hearing today that there are two different operations going under this. That is what I need to have clarified in my mind. I don't have a problem with the fact that they are doing it inside or outside if they are doing it presently, but there is a dual use going on in a single-purpose. This is for a single-purpose. I don't know how you can do them both together. That is why the three items in here, the lot-split, handling the waste inside and item No. D."

BARFIELD "Well, No. D,...as I understand it, the major contention here is to defer. If they are operating in compliance today in their current location and they are doing it outside, and it appears to me that the Health Department does not have a problem with this being done outside."

JOHNSON "Commissioner McKay, I am curious. As far as just working this out, does that also include the review of this other tenant that is in this same building?"

MCKAY "Well, yeah. That changes the whole purpose of the thing."

JOHNSON "That is my intent. I think that is what we have something that is totally different from what were presented when I read this report. I want to make sure that we review all things. Now whether it is inside or outside, that is probably going to be determined by Code or by something we do in order to satisfy some neighbors and that sort of thing, but when we have solid waste, the last thing you want is one trash on the wrong truck. So I hope they will find out what is truly going on here."

MCKAY "It says here 'no other types of solid waste will be accepted or processed' and they are doing that. These folks are not doing it, but it is being done in the location."

KROUT "I strongly advise you to take this under advisement for a month. There are too many unanswered questions. Any other kind of solid waste transfer station is supposed to be licensed by the County, so I am not sure we have a legal operation on the site today."

PLATT "I just want to request that if we vote to defer that the Health Department be asked to be here when we reconsider it. I think we want to get all of the airlines on the right runway."

GAROFALO "Perhaps we should have Susan Erlenwein here, too. If you have a solid waste transfer station in operation out there, we would like to know what that is all about. I think it makes sense to have her here."

CARRAHER "Are there any further questions or any further commentary on the motion to defer. Was there a time line on that deferral?"

MCKAY "The next meeting, which is four weeks away."

CARRAHER "I just wanted to get that on the record. We will move into a vote."

VOTE ON THE MOTION: The motion carried unanimously (12-0).

9. **Case No. CON2000-00047** - Romualdo Lopez, Leandro Raymundo, Graciela Raymundo, Epigmenio Paredes (owners); Max Christensen (agent); request a Conditional Use to permit ancillary parking for adjoining Azteca entertainment and restaurant on property described as:

BEG 17 RDS N & 493 FT W SE COR NW1/4 TH N 78.75 FT W 140 FT to AVI S 78.75 FT E TO BEG SEC 5-27-1E TOGETHER WITH Lots 1 through 4 except the east 81.25 feet thereof, inclusive, Block C. Woodland Heights Addition, together with one half of the vacated street adjacent TOGETHER WITH Lot 1, Block B, Ramsey and Fuller Addition, together with one half of all adjacent vacated streets.
Generally located 300 feet west of Arkansas Avenue on the north side of 25th Street North.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicants are requesting a "Conditional Use" to allow additional off-street parking on property zoned "B" Multi-family located a block west of Arkansas Avenue on the north side of 25th Street North. The application area is shown on the attached map. It includes a buffer strip on the north and west side of the old Fireside Lanes bowling alley, zoned "LC" Limited Commercial, plus one-half the width of the vacated Mascot Street on the west and one-half the width of vacated Shelton Street adjoining Lot 1, Block B, Ramsey and Fuller Addition on the northeast.

The parking is being requested as a "Conditional Use" for ancillary parking to partially comply with parking requirements for the Azteca Restaurant being redeveloped in the old Fireside Lanes facility. According to the applicants, Azteca would be available for special events such as receptions and dances. It would offer restaurant facilities for gatherings. The applicants intend to obtain a license to serve liquor in conjunction with the restaurant's operation. The facility would not be classified as a drinking establishment or night club and would not require a "Conditional Use" as a "drinking establishment" as long as revenues from the sale of alcoholic beverages are less than 50 % of the gross revenues from the sale of all food and beverages. Were the operations of the facility to generate more than 50 % of its revenues from alcoholic beverages, it would need a second "Conditional Use" for a drinking establishment since it is within 200 feet of a school, public park, church and residence.

The estimated parking requirement for the building, based on its use as a restaurant, is 366 parking spaces. The proposed site plan shows a total of 231 parking spaces, of which 158 (68 %) are located in the "B" district and would be considered the ancillary parking. The facility is still 135 parking spaces short of meeting minimum requirements even if this "Conditional Use" application for ancillary parking is approved. The applicant will need to obtain a variance from the BZA or provide a solution for the parking shortfall. (See the "Recommendations" section for possible options.)

The surrounding land uses have changed character markedly since the bowling alley was built in the early 1960s. Safeway was located to the east, on the northwest corner of Arkansas Avenue and 25th Street. Today, this site is owned by the City and has been used as a community center (Arts and Crafts building).

The land to the north and west was occupied by 10-15 single-family homes. The original part of Henry Roe Cloud Elementary School was located on the northeast corner of 26th and Salina, and was separated from the bowling alley by the single-family homes. During the 1970s, these homes were removed and the land was incorporated into the Cloud school site on the west and into Evergreen Park on the north. A major expansion was completed for Cloud Elementary. Also, Evergreen Recreation Center was constructed. The rights-of-way for Mascot Avenue and Shelton Avenue north of 25th Street were vacated and reverted to the adjoining property owners. An interesting historical detail is that Mascot Avenue was originally dedicated as right-of-way for the Arkansas Interurban Railway, a trolley line that was never developed.

The area south of 25th Street North was developed in the 1940s and 1950s. There is an auto glass shop, a small restaurant, a few vacant lots, and a church south of the application area. Schell Park is located to the southwest.

CASE HISTORY: The property is part of Woodland Heights Addition, platted May 22, 1955. It includes the only remaining lot from Ramsey and Fuller Addition, platted July 23, 1958, with the remainder of Ramsey and Fuller Addition being absorbed by Evergreen Park Addition, platted July 21, 1976. It also includes an unplatted tract, plus one-half the vacated right-of-way of Mascot Avenue (V-0799) and one-half the vacated right-of-way of Shelton Avenue (V-0588). The majority of the site was zoned "LC" Limited Commercial with an approximately 50-foot "B" Multi-family buffer to be used for parking on the western edge in 1959 (Z-0129). Additional "B" buffering to be used for parking was added in 1962 on the northern edge of the site (Z-0393).

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6"	Evergreen Park, KGE substation
SOUTH: "LC"; "B"; "SF-6"	Retail, church, vacant lot, residence, park
EAST: "LC"	Community center and park
WEST: "SF-6"	Cloud Elementary school and playfield

PUBLIC SERVICES: Municipal water and sewer services are available to this site. 25th Street North is a four-lane arterial street with 1997 traffic counts of 5,279 cars per day and projected average daily traffic of 15,727 in 2030.

The vacated portion of Mascot contains a KGE easement that connects to a utility substation located to the north on 27th Street.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" of the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this property as "parkland/open space." The "Wichita Residential Area Enhancement Strategy Map" shows the site as part of the "revitalization area," which encourages parking flexibility.

RECOMMENDATION: The 1999 Update to the Wichita-Sedgwick County Comprehensive Plan shows this as a revitalization area, which would encourage redevelopment of existing facilities and flexibility in meeting parking needs. However, the Comprehensive Plan also identifies it as "parkland/open space," presumably to be incorporated within the Evergreen Park complex. Park use would be in harmony with the adjacent elementary school use and would eliminate any potential conflict posed by a restaurant offering alcoholic beverages within close proximity to the school. These factors recommend against reuse of the facility for a restaurant offering gathering facilities of the type proposed by the applicant.

However, the "LC" zoning for commercial use and the "B" zoning for ancillary parking (at the time, parking was permitted by right in this district) has been in place for 30+ years. The issue is whether it is appropriate to approve the "Conditional Use" for ancillary parking in order to allow a commercial use of the intensity proposed by the applicants.

The existing structure is slightly more than 20,000 square feet in size. The estimated number of parking spaces needed to meet parking requirements for using the entire building as a restaurant is 366 spaces, well above the 230-240 spaces that would be available from total paving of the site from property line to property line, as proposed on the Site Plan. Also, this also makes no provision for landscaping or buffering. In comparison, parking requirements for a fitness center would be about 220 spaces and for general retail would be 80 spaces. In contrast, a dance hall, which may be closer to the type of gatherings and events envisioned by the applicant, would require even more parking. The estimated parking for this type of use would be around 550 spaces.

In discussions with the Office of Central Inspection, several concerns have been noted. First, the applicant is still well below parking requirements for a restaurant even if the "Conditional Use" is approved. Possible solutions are for the applicant to find off-site parking, either by acquisition of nearby sites or by shared parking agreement with a nearby site. However, the options are limited to the school or city-owned properties on the north side of 25th Street. To our knowledge they have not obtained any off-site parking. The possibility of posting a lower occupancy than the building can handle was discussed and felt to be inadvisable. It is extremely difficult to enforce posted occupancies less than the building comfortably holds, since the tendency is to allow more customers; it is impractical to rely on constant checking by enforcement personnel. Another suggested possibility is to physically separate off part of the structure to make the restaurant/assembly areas smaller. This would be more likely to hold down occupancy levels to those in conformance with parking available than merely posting a lower occupancy level.

Finally, another issue relates to the difficulty of determining the actual proportion of revenues being by alcoholic beverages. Generally, audits are conducted of six-month revenue periods to make this determination, with the auditors

looking at the food and beverage vs. alcoholic beverage revenues. Since the applicants envision this as more of a banquet hall—a gathering/reception type of facility--than a traditional restaurant, it will be more difficult to determine the amounts are being charged for the alcoholic beverages.

Based on these issues of (1) the property not being in conformance with the Comprehensive Plan, (2) the lack of adequate parking even if the "Conditional Use" is approved, and (3) the problems with ensuring that the operation would actually operate as a restaurant rather than a dance hall or drinking establishment, Staff is reluctant to recommend approval of the proposed application. It would, in effect, facilitate the higher intensity commercial restaurant use. Absent the "Conditional Use," the adjoining "LC" property would be limited to a much lower intensity use, such as general retail, that would exert much less impact on the surrounding area.

However, if all these issues were removed, the proposed ancillary parking would be a logical use for the adjacent commercial use, and probably the only viable economic use for these strips of land. It would provide a buffer with landscaping and screening to the north and west to improve the separation between the commercial use and the school and the park. Therefore, Staff recommends that the request be APPROVED subject to the following conditions:

1. The ancillary parking area shall be developed in conformance with the requirements of Sec. III-D.6.p of the Unified Zoning Code.
2. If the property adjoining this parking area and for which the parking is utilized obtains a license to sell alcohol, that license must be a "drinking establishment/restaurant" as defined in Title 4.04.010(t) of the City Code and in addition must meet the following additional conditions of 70 % of the floor area being required for use as table seating area and they must derive not less than 50 % of gross revenues from the sale of food and beverages for consumption on the premises within a six-month time period. Further, they shall be required to keep clear records of the receipts so that this percentage can be clearly determined. If the property/use cannot meet these minimum requirements and desires to maintain a license to sell alcohol as a "drinking establishment" or "drinking establishment/restaurant," a "Conditional Use" for a tavern/drinking establishment must be obtained prior to continued use. At this time, the facility would not qualify for a "cereal malt beverage" license under Title 4 of the City Code since the building is located closer than 300 feet to the nearest property line of a church or school or within 150 feet of a residential zoning district.
3. This parking shall not be used in association with any service of alcoholic beverages during regular school hours.
4. On-site security both inside the establishment and in the parking lot shall be required whenever alcoholic beverages are sold or consumed in order to control outside nuisance activity, including but not limited to trash, drug use, loitering, loud music, fighting, and any other criminal activity.
5. The amount of area utilized for the restaurant and party rooms shall be limited by the amount of parking provided, including the area zoned "LC," the ancillary parking area zoned "B" with a "Conditional Use," or other off-site parking approved by the Office of Central Inspection. If the applicant cannot obtain sufficient parking to meet zoning requirements for occupancy of the entire building, as determined by the Office of Central Inspection, the building improvements shall be designed to prevent excess occupancy.
6. Prior to approval of the "Conditional Use," the Site Plan shall be revised to allow for code-required landscaping. A Landscape Plan providing a landscaped street yard and parking lot landscaping and screening along 25th Street and a buffer of one tree for every 40 feet along the north and west property lines shall be submitted to the Director of Planning prior to issuing of the building permit.
7. Lighting shall conform to Sec. IV-B.4, with the lighting standards for the ancillary parking area and the main structure being of the same design. No string-type or search lighting shall be permitted on the application area or on the adjoining property zoned "LC."
8. No free-standing signs, portable signs, off-site signs, streamers, banners, pennants, pinwheels, commercial flags, bunting or similar devices shall be permitted on the application area or on the adjoining property zoned "LC."
9. The compatibility noise standards of Sec. IV-C.6 shall be complied with. No outdoor speakers and sound amplification systems shall be permitted on the application area or on the adjoining property zoned "LC."
10. The site shall be developed in general conformance with the approved site plan.
11. Any violation of these conditions shall render this Conditional Use Permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The land to the north, east, west, and southwest of the application area is developed with institutional (elementary school) and parks and recreation uses. These properties are zoned "SF-6" except for a community center that was never rezoned from "LC" when it was

converted from a grocery store to a community center. The properties across 25th to the southeast are retail, zoned "LC," and the property to the south includes a church, zoned "LC" and residences, zoned "SF-6."

2. The suitability of the subject property for the uses to which it has been restricted: It is inconceivable that the property could be developed with "B" Multi-family use, given the character of the surrounding land uses of parks and the school. Its only realistic use is as a buffer zone or as ancillary parking. There are other commercial uses available such as fitness center and general retail that would not require as much parking and would not pose the enforcement issues related to (1) determining the percentage of alcoholic consumption, with the corollary issue of whether they are falling within the classification of drinking establishment and/or night club that requires a "Conditional Use" based on proximity to school, park, church, and residences, or (2) ensuring that the occupancy load does not exceed available parking. So long as the building is used for a bone-fide restaurant or gathering place with alcoholic consumption comprising less than 50 % of total consumption, and the occupancy does not exceed the parking provided, the use of the ancillary parking would seem a reasonable use of the "B" zoning district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the "Conditional Use" would allow intensification of the commercial site imbedded within an institutional/park setting. In addition, unless the approval is conditioned by reducing the size of the establishment or by providing additional off-site parking, it would result in overflow parking into the neighborhood. This introduces new conflicts between the residential and commercial areas. Finally, any consumption of alcoholic beverages near the school is viewed as a conflict with the anti-drug efforts of the school district. However, as long as the sale of alcoholic beverages are below 50 % of that of all food and beverages, it is defined as a restaurant with a drinking establishment license and does not require a "Conditional Use" for a drinking establishment.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is not in conformance with the Wichita Land Use Guide. Redevelopment of the property does support the policy of encouraging revitalization and investment within the area; however, the investment should be such as to encourage continued neighborhood redevelopment. If occupancy levels and issues with alcoholic beverages and other nuisances are adequately controlled, a restaurant/gathering place could be viewed as a complementary use to the surrounding park and community center facilities. The proposed ancillary parking would be considered in conformance with the "Conditional Use" requirements for ancillary parking.
5. Impact of the proposed development on community facilities: One major impact is increased traffic demand. Another impact could be the increased enforcement necessary to ensure compliance with occupancy issues and to regulate any alcoholic consumption and nuisance issues related to the restaurant and its parking facilities.

CARRAHER "Are there any ex parte disclosures that need to be made on this item before we start the discussion? Seeing none, Ms. Goltry, the floor is yours."

GOLTRY "This request is on property that is zoned 'B' Multi-family that wraps on the north and west side of an 'LC' tract, situated between a public park and a school. The parking is being requested as a Conditional Use for ancillary parking to partially comply with their requirements for the proposed Azteka Restaurant that is being redeveloped in the old Fireside Lanes Bowling Alley. According to the applicant, they intend to operate this as a restaurant that will also have some receptions or dances associated with it for special gatherings. They intend to apply for a drinking establishment/restaurant license. That means that they are primarily a restaurant with the provision of alcoholic beverages as less than 50% of the gross revenues.

Estimated parking requirements for the old Fireside Lanes, based on its use as a restaurant is around 365 spaces; however, they don't have that many spaces available on site. In fact they have something around 75 to 80. With this ancillary 'B' parking on the edges, they would be able to go up to around 220 or 230 spaces, still they would be short of the total parking requirements they would be needing to operate, which would mean that they would have to be looking for other types of parking arrangements, like a BZA reduction or some off-site parking arrangements. The likelihood of obtaining off-site parking is somewhat small, because the adjoining property owners, the school and the Park Board would probably not be willing to enter into those agreements. They cannot cross 25th Street because it is a major arterial."

Carraher left the meeting.

MCKAY "Donna, this staff report was handed out as revised. What is the difference between this and the original?"

GOLTRY "The difference is on the bottom of Page 4. There are two added sentences. The next to the last sentence on Page 4 where it says 'it would, in effect, facilitate the higher intensity commercial restaurant use, absent the Conditional Use, the adjoining 'LC' property would be limited to a much lower intensity use, such as General Retail. That would exert much less impact on the surrounding area'. The other change is on the very last page, the last four words 'and it's parking facilities' were added. Those were the two changes.

MCKAY "Thank you."

GOLTRY "I apologize. I intended to say that at the beginning so you wouldn't be wondering.

MICHAELIS "Are there any other questions of staff?"

GOLTRY "Let me point out some of the surrounding land uses. This is an interesting site. It is the old Fireside Lanes, and I am sure some of you are probably familiar with it. Arkansas Avenue was developed in the 1950s as a major arterial with a lot of commercial zoning along it. When it was developed, there was a Safeway located here (indicating); houses were located to the south. This is Schell Park, and it has been Schell Park for a long time, as near as I can tell. It was dedicated, when I looked in the aerials, from the 1950s. To the north, at the time, Fireside Lanes was developed, we already had the beginnings of Cloud Elementary, but it was a much smaller facility that was expanded in the 1970s. When it was expanded in the 1970s, and also during the decade of the 70s, the City acquired a large property here that includes the old Safeway area and wraps around the Fireside Lanes, and then the Henry Row Cloud Addition goes around basically this way (indicating). In association with those two large institutional expansion and additions, they built Evergreen Recreation Center, they vacated Mascot Avenue, vacated Shelton Avenue, and, as a little bit of trivia, Mascot had an 80-foot right-of-way instead of 60 feet because it was the old Arkansas Interurban Railway line for the streetcars.

Carraher returned to the meeting.

So you can see that things changed dramatically in the 1970s. What was here before? It was platted as streets that just continued north just in the same direction as here and they removed about 10 to 15 houses in this area that were already developed at the time of the expansions.

In terms of public services, it is located along 25th Street North, and if any of you are reading closely, and I apologize for having such an extremely long and convoluted staff report, you might note that the amount of traffic did triple, and if any of you are wondering why, several things have happened. One is that there has been a connection--a bridge built between this location and Broadway. That connection has meant that when they have modeled the future traffic demand, they are modeling a whole lot larger connection. There have also been some improvements to the west. We thought perhaps the great increase might be predicated on the notion of a crossing at the Big Ditch, but that is actually just a portion of the increased traffic. Most of it derives along the other bridge improvements, over toward Broadway.

As a final public service thing to point out, there is a KG&E easement that runs along the vacated Mascot Street for a KG&E substation that is located along the north part of Evergreen Park.

Now I am going to come to the 'Conformance with Plans and Policies'. First of all, it is not in conformance with the Comprehensive Plan because the Comprehensive Plan shows this area for parkland and open space. However, the idea of redeveloping the site, and using ancillary parking as an adjunct to that, is in conformance with the notion that this is a revitalization area and one of the strategies for revitalization areas is to encourage parking flexibility.

As you will notice in the 'Recommendation Section', there are a lot of things that tend to make one hesitant to recommend approval of this Conditional Use for ancillary parking. Those kinds of issues are, is the proposed use in close harmony with the surrounding school and park facilities? However, when you get to the bottom of it, you see that Fireside Lanes has been zoned 'LC' since before we started publishing the maps in the form we do, which means it has been that way since the mid 50s, and the ancillary parking, which was zoned for part 'B' as a buffer and parking use has been that way since 1959 and 1962, depending on which portion of the strip you are looking at.

That being said, we still have some concerns. The first concern is once you have added this ancillary parking, do you solve the parking problem? No. You still have a parking problem. You have the problem that we are still below what we need. So what might be the solution? I have already gone over the possibility of the off-site parking, saying that I don't think that is a very likely solution. The second solution is to 'post occupancies'. That is extremely difficult to enforce. You would have to have someone there on-site making sure. The third option, and one that OCI is more willing to think of as a potential solution, is partitioning off a portion of the building, so you effectively reduce the area that is available for assembly within the building, or for restaurant use within the building. That is one way to try to keep down the amount of use in the building in conjunction with the amount of parking that is available.

Finally, as I have said, there has been a lot surrounding the whole idea the fact that they would like to have a drinking establishment license. Not for a drinking establishment, but for a drinking establishment/restaurant; we call them D.E.R.s. What that means is that it is the food and beverages, non-alcoholic variety, that would be the primary portion of their revenues.

Based on all of these issues, we are concerned that while the parking will intensify the commercial restaurant use, and absent the commercial parking, they would be using the property for a lower intensity commercial use, such as general retail or perhaps a fitness center. But based on all of what I have gone through, staff has come down to the recommendation that ancillary parking is a logical use for this strip of property, so we have recommended that approval and we have a lengthy list of conditions that are designed to ensure that both the parking issues and the issues related to the parking lot, such as keeping the noise level down and the trash down in the parking lot, etc., makes it more compatible with the surrounding land uses. In other words, the intent of the conditions are to try to mitigate the impact between this restaurant and the ancillary parking and the surrounding park and schools.

I have the lengthy list of recommendations there. I won't go through them all except for to point out on No. 2 where we are suggesting that even more stringent recommendations be imposed to ensure that it is, in fact, a bona fide restaurant and that being that they have both 70% table seating, which is one way you can qualify as a D.E.R., plus they also qualify

under the 50% rule, which is another standard way. The other conditions include such as no service of alcoholic beverages during school hours; on-site security; the partitioning, if need be of the use; landscaping; lighting; limitations on signage; limitations on noise.

D.A.B. 6 considered this application on Monday night. I believe you have their recommendation. It was 7-0 to disapprove. The D.A.B. members went through their findings as well. You will find them contained in the next to last paragraph of the D.A.B. recommendation. When they went through the findings, they found that this facility would be used as a drinking establishment, not a restaurant, which I cannot comment on. The applicants were working on the facility without building permits. This was discussed at the D.A.B. meeting. We had a member of OCI present to testify to this fact. The proposed business is between two parks, a recreation center and a school. There was a lot of discussion about safety in the area and opposition of neighborhood residents; opposition from USD 259. I believe we do have representation from USD 259 here today to speak, as well as the applicants. Are there any questions?"

OSBORNE-HOWES "I have a real quick question. Did they indicate to you that they were going to be serving alcoholic beverages, or did you just assume that?"

GOLTRY "We have had meetings with them in development review where they have indicated that, and I believe their attorney is here. I know that they intended to get a D.E.R. type license."

CARRAHER "Are there any further questions? Thank you, Ms. Goltry. Would the applicant like to speak to this item at this time?"

MAX CHRISTENSEN "I am the architect working on the project. We are not really asking for anything that the site is not approved for, it is just that we don't have enough parking to facilitate our needs, and that is why we are here today. If there are any questions with regard to what the design entails, I would be glad to help with that, otherwise I will let Chris Magaña answer any questions you may have with regards to use."

CHRIS MAGAÑA "I am an attorney here in Wichita with Klenda, Mitchell, Austerman and Zuercher. Mr. Christensen and I have been working together for the last couple of months, along with the owners of the property, trying to facilitate this coming into fruition.

I was contacted by the owners a couple of months ago seeking assistance because they were having some problems with Central Inspection, which is the working without a permit. It turns out my clients were trying to make some minor improvements initially, just getting the place cleaned up and their definition of what minor improvements were a little different from Central Inspections, but that got straightened out. Basically, it is kind of red tagged and has been put on hold. They are in compliance with that for the time being. The property owners do want to ensure that we are basically following the City Code; following licensing requirements. That is one of the reasons they got me involved. We have been working hand in hand with them all along to this point.

We are talking primarily a restaurant with a liquor license. Both our clients and we believe that a liquor license aspect is sadly an essential part of any restaurant business nowadays to keep it in business. We do envision a lunchtime business crowd as that is necessary to reach the 50% food and non-alcoholic beverage sales requirement of the Code. We also envision evening business, as far as evening restaurant business in addition to some weekend business. There is also mention of special events, primarily wedding receptions, perhaps some community events and dances; things like that. Those would almost certainly be Friday, Saturday and Sunday type of events, which would take them away from any school related interference.

The viability of this restaurant, based on the parking numbers that you have heard, we believe does entail that we do need this ancillary parking to make it work. As they have said, we have 75 parking spots on site right now, which really just doesn't do it. We are going to need more. The plan we proposed, we believe at least meets minimum requirements.

The two points I would like to point out on Page 5 of the Planning Department's report, Items No. 3 and No. 5, we do have some concerns with. On Item No. 3, which states that the parking, or as Ms. Goltry stated, 'the business shall not be associated with the service of alcohol during school hours'. We are not quite sure about, first of all, how that would work. Usually a liquor license is for the facility permanently, and not tied to hours so much.

The problem we would also run into is being able to serve liquor or alcoholic beverages in the evenings but not being able to serve them with the lunch time business. We believe that we need to have that flexibility to serve those during the lunch time hours, which is, of course, going to coincide with school hours during a Monday through Friday time frame. We don't think that is a problem, simply because the place was Fireside Lanes before this, which obviously served alcohol during the day when school hours were on. We don't see it being really much different than that. The numbers may be more than Fireside Lane lunch business was, but nonetheless, it is not like they are going to be spilling out into the streets or going out onto the playground or something. We hope that this is something that we can work with you on and perhaps have that requirement waved.

Our second concern is Item No. 5, which has to do with how to address the occupancy. The staff report believes that their best position would be to put up some sort of a permanent wall or basically split the facility. The problems we have, this place can probably hold roughly 1,100 or 1,200 people, we believe. The parking we would get, assuming this plan is approved, would give us roughly 700 in occupancy. We don't know what the viability will be of getting off-site parking. At this time, we agree with Ms. Goltry. We aren't confident of it, but we haven't closed the door on it, and we haven't

explored all of the options on that to see if that is available. But if we are required to put up some sort of a permanent wall, knocking off 30% of the building, or 50%, or whatever it requires, so that our parking, which is roughly 700 people if this plan is approved, to knock a wall down the middle, a permanent wall, so that the occupancy can't exceed that. That may be a problem, certainly, because somewhere down the line we could obtain off site parking and there probably will be considerable expense and there are some real questions about putting a wall down the middle of a building and then therefore not having half the building or a third of the building available for anything in the future, once that is put in.

We would request that the best option would be to put a maximum occupancy load. I know that the staff's opinion on that, thinking that that is maybe not that good, but that is something that is across the City we have different occupancy loads and that is, certainly if our clients exceed that occupancy load, they are subject to fire violations, city violations, whatever it would be. They would certainly seek to comply with that, and we believe they could comply with that. Seven hundred, particularly with the parking that is available, we don't envision 1,200 people being able to come in, particularly with the size of the events we are talking about; wedding receptions and things like that. They probably aren't going to go that high. We would like to see the requirement removed for a permanent wall or something like on No. 5.

In any event, we are being flexible with this. We would like to be flexible with you all. We would like to see this as a positive business addition to that part of the City and we really see it pretty much as operating much along the lines of the previous business that was there, Fireside Lanes. Thank you. Mr. Christensen and I will be happy to take any questions you have."

CARRAHER "Are there any questions for the applicant?"

BARFIELD "Sir, you said that you thought you were going to work with the neighbors and keep them informed and you thought you had been doing a pretty good job of that."

MAGAÑA "Excuse me, sir, I don't recall saying that. Did Ms. Goltry say that?"

BARFIELD "I thought I heard you say that."

MAGAÑA "No, we have been working with Central Inspection and the Planning Department. The first contact we had with the neighbors was when we came to this phase where we were required to give notice and such. We did appear at the D.A.B. meeting on Monday, but that was really our first contact with them."

BARFIELD "Were members from the public present at that meeting?"

MAGAÑA "At the D.A.B. meeting, yes."

BARFIELD "The reason I asked is that it appears here, from the letter we have here, and also from some of the comments that were made at the D.A.B., there are apparently some misconceptions. They say here that the facility will be used as a drinking tavern and not a restaurant. Now, that evidently, is not something they got from you or from the applicant, but it is something that has circulated among them.

Also, in the letter it says 'it was not well explained what the building was to be used for. From people in our neighborhood, we have heard that it will be a place where there will be dancing and liquor'. That clearly would explain to me that they have not heard directly from yourself or the applicant or anybody that is directly involved with this as what actually is going to take place at this facility.

Secondly, you made mention of the fact that it is not much different than what was there when the bowling alley was there. Maybe I am out of touch, but I don't know of any bowling alley that you can walk into at noon and get a mixed drink."

MAGANA "It is my understanding that with the liquor license that the bowling alley had before, which was a D.E.R., the drinking establishment/restaurant, they had the same type of liquor license that we are seeking to have."

CARRAHER "Are there any further questions of the applicant? Seeing none, thank you, sir. Now, we will move it to the gallery. Is there anybody in the audience who is wishing to speak in favor of the item at hand? Seeing none, is there anybody in the gallery who is wishing to speak in opposition to the item at hand. Yes, ma'am."

CARLA SMITH "I live at 210 South Breezy Point Circle. I am the Principal at Cloud Elementary. I guess I come here today on behalf of over 860 people who attend Cloud Elementary. The Henry Row Cloud Addition, as you can see, is adjacent to the property being discussed. I am concerned about extending the parking on this property for several reasons. Every day, we have numerous families, parents, children, who not only drive down 25th Street, but walk down 25th Street--the sidewalk comes right across that property--coming to school and going home. This is the only direct way that these children can get to and from school. I am concerned about their safety due to the increased traffic this would bring in expanding the lot. I am concerned about the change it would bring to the neighborhood, the increased traffic.

The property we are discussing around this area is really focused on families and children. We have the school, we have the Evergreen Recreation Center, we have the park, we have the church, we have the vacant arts and crafts and building that we hope soon will become some sort of a community center, and we have the soccer fields. While it may seem that once the school day ends that the children's activities ends, this is far from reality. At school, our night activities include

tutoring, Girl Scouts, family nights, parent classes, we have homework club, we have soccer games, just to name a few. In the surrounding areas, the children use the Evergreen Recreation Center on a daily basis. You will see organized youth football and soccer practices and games virtually every evening and on almost every weekend.

The families use the parks for play as well as for picnic areas. Parents need to know that this is a safe area for their children to be in so that they can participate in these activities outside of the school day as well as during the school day. This is different from the bowling alley. We had a very close relationship with the bowling alley from the school aspect and yes, communication has been pretty poor. I understand that today we are just really addressing the additional parking, but in reality, the issue does go deeper. Part of that, quite frankly is that there is a level of mistrust within the neighborhood about whether the owners will really use the building for what it is zoned for. I am not sure that this mistrust is totally unfounded, given some of what you have heard today, such as the changes that were taking place on the property without the City permit.

Quite frankly, I don't believe that it was just an upgrading of the facility. It is my understanding that there was actually a dance floor being put in. Concern has been expressed about the true use of the property, and neighbors need assurance that the special events will also not bring nuisances to the area, such as the noise and that enforcement and monitoring can really happen.

I am appealing to the Commission as well as to the owners of this property to consider the neighborhood, the safety and welfare of the children and the families and the impact that this will have on this area. Thank you."

CARRAHER "Are there any questions of the speaker? Thank you. Is there anybody else in the gallery who wishes to speak in opposition to the item?"

FRAN CROWLEY "Good afternoon. I live at 5706 East 20th. I am the manager for the Wichita Independent Neighborhoods. I am also on the Wichita School Board. This issue came to my attention when I got a phone call from one of the Neighborhood Associations in that area. I won't repeat a lot of the things you have heard before. I know that time is precious, but I do want to point out that even with the approval of this parking, they will still need more parking. I would like to point out that this is not in conformance with the Comprehensive Plan, and I would like to point out that it is not in harmony with the parks, schools and churches that are nearby. There is broken trust between the developers of this property and the neighborhood associations.

The owners have proceeded with no business plan for the development, pulled no construction permits, and still do not have an architectural design for what is going to be ending up there. So I think the neighborhood associations have good reason to wonder what is going on, and what will happen. One of the items that hasn't been brought up that I will discuss and that is the increased pressure on city services if this becomes another Cotillion Ballroom in the middle of the City. That is the fear of what will happen.

As far as the police, they would have to be out all of the time to do ticketing, and I can tell you from my office at the Wichita Independent Neighborhoods, the call I get a lot are from neighborhoods that are trying to deal with neighborhood bars--broken glass, fights, noise. Lots of problems come with an establishment that is focused on alcohol and entertainment rather than a dining establishment like a Chi-Chi's or something like that.

One of the questions that I think needs to be looked at is the maximum occupancy load. This building can house up to 1,200. I just wonder who will be counting the number of people that go in? Who will enforce that? We all know that that is difficult to deal with the current level of resources that we have for city services. In conclusion, I would just like to state that this is not a neighborhood business. What we would urge is that the parking stay the same and that they establish themselves as a restaurant, show the neighborhood that they are a good partner in the area and can be trusted. I would also like to mention that dining establishments close at about 11:00 o'clock at night."

HENTZEN "Ms. Crowley, I get the impression that the school people and the park people don't want to approve this thing. Do you know, has the City or the School Board taken an interest in buying that property to make open space or a park facility? Do you know of any indication of that?"

CROWLEY "I don't think that has been discussed at that level. I do know that because of the nature of the area, both the park board and the school board are very concerned that we not create an area that is going to destabilize the neighborhood rather than stabilize it."

JOHNSON "I want to make sure that I understood you right. Are you against this thing totally, or are you against the size of it? If it has 700 people doing the same thing on a dance floor, would that be okay? Or do you just think because there is a possibility that there could be 1,200?"

CROWLEY "If they were to open a restaurant with dining, with alcohol at the current size they are, or with a population under 300, then that probably wouldn't be a problem. But when you start getting up into these higher numbers, you create lots more crowd control, trash, noise and problems for people in the area. If you have driven by this area, it is very quiet. There are parks, there is a lot of investment in terms of our City into making this an area that people will want to live in. There are not too many people that want to live right next to a ballroom where there are large crowds."

OSBORNE-HOWES "I think you have answered most of my questions. I have two quick ones. Are you speaking for the school board or just for yourself?"

CROWLEY "Just for myself."

OSBORNE-HOWES "So what you are saying is that you are not opposed to the restaurant and using liquor, it is the dance hall."

CROWLEY "Right. In fact, I work with the neighborhood associations a lot, and I am sure a good, high quality restaurant would be welcomed in the area, but they just don't want a large, out of control night club."

CARRAHER "Are there other questions of the speaker? Thank you, Ms. Crowley. Is there anyone else in the gallery who wishes to speak in opposition to this item?"

SHARON FEARY "I live at 1323 North Emporia. I am a member of the 6th District Advisory Board. Unfortunately I had to be at a high school meeting Monday night and was not able to attend that meeting, but I was very pleased to hear that they did vote unanimously to deny this. I think that as city staff has said, this is not in keeping with the Comprehensive Plan. I guess to me that is kind of the bottom line. Yes, parking, they say, could be some kind of a buffer, but this city has just voted to invest \$284 million dollars in our public schools. With that comes the hope that wonderful schools such as Cloud is, and will bring people back to the inner city. There is a lot of talk of redevelopment in the inner city and I just don't see that this is in keeping with the redevelopment that we want to see go on in our city and around our schools."

I am also extremely concerned about safety, especially when I hear the owners representative talking about that they really need to serve liquor at lunch. So you know, somebody goes in for lunch and four margaritas later it is 4:10 and 860 children are coming out of Park School and that guy decides to zip out of the parking lot at the same time. It is not a risk that I would be willing to take. Also, I know that in Evergreen Park, sometimes I am over there as late as 10:30 at District Advisory Board meetings and there are still kids out in organized activities and they are there for a purpose. They are playing. This was mainly in the summer; I don't think they would be there tonight. But that park is used by young people and here again, I just think it is a safety issue. They can go ahead and open their business on a smaller scale with the parking that is there, but I don't think we should add extra parking. Thank you."

CARRAHER "Are there any questions for the speaker?"

OSBORNE-HOWES "I will ask you a similar question to what I asked Ms. Crowley. You are opposed to the concept, or just the dance hall?"

FEARY "It is my understanding that the way the zoning is, they could go ahead and open a restaurant there with limited seating based on the amount of parking they could have. So I have no problem with that. I have a problem with increasing the parking to increase a much more intensive use of the facility."

CARRAHER "Are there any further questions of the speaker? Okay. Ma'am, I believe you wanted to say a few words?"

LOLA HOWARD "I live at 2534 Mascot. This is just a block south of the building in question. I have a vacant lot that separates me from that building. The lady back there neglected to say that the City has also put in I don't know how many thousand dollars in the rejuvenation of Schell Park. For 19 years we put up with gambling, liquor, traffic, etc., from Schell Park, the adult soccer league. We finally got that under control."

In addition to being a homeowner, I am also the vice-president of the North End Neighborhood Association. We have three neighborhood associations that fought Schell Park. We actually are 27th Street to the north, Arkansas east, 13th Street North and Porter West. Those are the boundaries. We are all very, very concerned because we can see these problems coming back again. You have asked several people if they object to the restaurant. I do not object to the restaurant. These people do not say to you, they will say that they don't want the alcohol, but when you ask them if they object to the proposal, they back off and don't say what they really object to is the alcohol. Also, they haven't mentioned that we now have a Hispanic Church at the corner of Shelton and 25th Street. These children start coming in Saturdays about noon and they are all outside playing and they are doing some sort of church activities, group actions or something, and they are well into the night in that park there. I am not saying late--like 10:30 or so, like churches do. They are all out there playing at that time.

We also have heard that the art and fair building will be turned into Headstart, which part of it is in the Evergreen Rec Center now, but there are 100 kids on the waiting list that they are going to put over there, and they are also going to have the Girl's and Boy's club there. Okay. Now that is two areas that they haven't addressed about children. Also, no one has said anything about North High filling up that entire soccer field in the summer. They have even put up a gorgeous score board there on the end of Cloud School. The park has just now started putting in the trees. What we are doing is we have gotten the adult soccer players out and we are putting only youth soccer on one side of Schell Park and a park on the other side so these kids can get back to playing football, playing baseball. The City tells us we are going to have sheltered grills and picnic tables in concrete. We are going to have a walking path. I think we did away with that because of the expense and decided to do some other stuff. They are going to put berms up along 25th Street to keep the soccer activity, the park activity off of 25th Street.

I am just sick after fighting for three years to get Schell back into control that we would go back into this. I will tell you that when this gentleman started building, I went over there several times asking him what he was going to put in there. He was very evasive. He wouldn't tell me. The first thing he told me was no restaurant because his daughter said too many

was in the neighborhood. Then he was telling people it was weddings and banquets, but he also brings in groups from outside of the state and does dances somewhere else in the city. I know not where. We all feel, in the neighborhood associations and the neighbors that that is exactly what we are going to have here. We are going to have another Club Liquid. Are there any questions?"

CARRAHER "Are there any questions of the speaker? Is there anybody else in the gallery who wishes to speak in opposition to the item? Seeing none, the applicant has two minutes for rebuttal if they so choose."

MAGANA "I will address a couple of the items that were brought up by some of the individuals. I am not quite sure where the misunderstanding with the neighborhood came from as far as what work was being done and before the city permits were requested and such.

What I can tell you is the work they are doing, was they were pulling out the gutters, the lanes themselves from the bowling alley. That is what they were doing. They knew they were going to turn it into something other than a bowling alley, so that is what they were doing, just some demolition. That is where they got into problems with city inspection. They basically stopped then when city inspection got involved. That was the work that was being done, so any deception or concerns of the community, I think are just mis-founded in that regard. That is what was going on.

One thing we didn't mention. I am not sure whether it was on the staff report. In our meeting with them earlier, we do plan to have some privacy screenings up around this property, both on the west side, which does border the soccer field and on the north side, which borders the park. That is something that I think they were going to require--they requested. We had planned to do that anyway. That will address some of these. With regards to this being a Club Liquid, or basically some sort of deception to get a club in there and go wild in the community, all I can tell you is I have had extensive discussions with the Police Department and the liquor licensing because the liquor license is certainly one aspect of this. The only license that is available for this is a D.E.R. license. Drinking Establishment/Restaurant. It is not even an option that this be just a club. Under the D.E.R. requirements, we are required to have 50% food. There is not two ways about it. We have 6 months and they will audit us after the first 6 months, and if we don't have the 50%, then this place is shut down, so it is not a question of playing around and trying to deceive anybody that this isn't really a restaurant. It is a requirement."

CARRAHER "Your time is up. Do you require another minute to close up?"

MAGAÑA "If you don't mind. I might just take one last minute and then I will get off the stage."

MOTION: That the speaker's time be extended for 1 minute.

MCKAY moved, **WARNER** seconded the motion, and it carried unanimously.

MAGAÑA "Let me just say that the parking question, as far as working with the neighborhood, we haven't had extensive discussions with them because this is really the D.A.B. meeting, and this is the first interaction we have had with them beyond the notice of the meeting.

They have worked with the neighborhood with respect that the soccer field, and I have been over the property several times, and all of the soccer parents who were watching or whatever, my clients have willingly allowed these individuals to park their cars there while they are watching these games. So this is also a benefit for the community. It is private property, but he is allowing them to do that. So he is certainly working with the community there.

With regards to the church that someone mentioned, that did just open, so it is not a long-standing establishment in the neighborhood."

CARRAHER "Are there any questions for the applicant?"

WARREN "You have the zoning that you need for the principal building to go ahead and do what you want, what is that zoning?"

MAGAÑA "The 'LC' zoning? Yes, as it stands, we do have that Limited Commercial zoning."

WARREN "Marvin, was that done by some kind of a metes and bounds description whereby there are lots here, but apparently the whole lot wasn't zoned. Is that where we stand?"

KROUT "The whole lot, talking about this parking area?"

WARREN "Well, as I look at this map, it looks to me like we have a bunch of residential lots here. It looks like a portion of those residential lots were made commercial. Unless it has been replatted, I assume that we've got a portion of those residential lots that are 'B' multi-family."

KROUT "I don't know. Donna, do you know about the history. Was this ever used for residential previously?"

GOLTRY "No, it was built as Fireside Lanes initially, but the 'B' buffer zoning has been around it since 1959."

WARREN "So those two different zoning..."

GOLTRY "Were established together."

WARREN "But they were described by some kind of a metes and bounds description?"

GOLTRY "They were described as the west 80 feet of Lots 1 through 4 of the Woodland Heights Addition, or whatever that is, I don't know."

WARREN "So the division we had between 'LC' and 'B' was something that was worked out years ago?"

GOLTRY "Actually, this was zoned in one part, right here (indicating) and this was added to it later, and then this was added to it."

WARREN "Are you saying that the lots in the brown there that would be to the north have already been rezoned?"

GOLTRY "They are zoned 'B'. 'B' is allowed to be ancillary parking, but it is with a Conditional Use."

WARREN "So the only thing there that is Limited Commercial is the red area?"

GOLTRY "That is right."

WARREN "And everything else is subject to our hearing today?"

GOLTRY "The brown part is the part that is the case before us."

KROUT Many years ago, when that property was zoned 'B', the Zoning Code allowed for a parking lot for an adjoining commercial use to be allowed by right. In about 1988, the Zoning Code was changed to say that even in the 'B' district, you needed a Conditional Use as well as in any other residential district to have commercial parking adjoining a commercial use, so that meant that the properties that formerly were allowed to have parking by right, like this one, had to now go through a Conditional Use process. It was no longer by right permitted for parking.

WARREN "Can I assume that this property in the brown has been used periodically as overflow parking for the bowling alley or whatever commercial use that was there, has in the past, that it has been used?"

GOLTRY "Portions of it."

CHRISTENSEN "It is paved right now, that area across the top is pavement."

WARREN "So there has been a history of parking out there?"

CHRISTENSEN "Yes. The only thing would be that on this left side, when they vacated it, half of it went to the school and half of it goes back to the bowling alley. When they did that, as I understand it, it assumed the lesser use, so rather than going to Light Commercial, it went to Residential."

WARREN "But they have never parked on it that you know of as part of any business, on this corner?"

CHRISTENSEN "I don't know."

GOLTRY "Yes, it has. Some of it."

CHRISTENSEN "That isn't really set up as parking right now, is it?"

GOLTRY "The vacated right-of-way isn't set up as parking, but there is some 'B' buffered part that does not belong to the vacated right-of-way. It was part of the zoning when the 'LC' was established as a legitimate buffer to try to buffer that from the surrounding residences."

BARFIELD "I have a question, but it is not for the applicant. It is for the principal of the high school. Ma'am, for clarification purposes, I just want to find out, is your opposition to the types of business that is supposed, or is your opposition to the additional parking?"

SMITH "I would have to say that my opposition is to the additional parking because I am really concerned about the additional traffic that it will bring into that area."

CARAHER "Are there any other questions for the applicant?"

WARNER "I don't understand what type of restaurant business based in that location that would draw 1,100 patrons at once. Are you bringing people in on buses? You are concerned about parking for up to 1,100 people for a family restaurant, and unless I am naïve, you must have one hell of a cook to draw that kind of people. Can you explain what this business is?"

CHRISTENSEN "No, we aren't bringing people in on buses. If we were, we would certainly tell you about it. As it stands, we don't really know what the exact numbers will be. The business plan is now that we believe we need more than the parking that we have. There are no two ways around it, we are certainly looking at also having special events in conjunction with this, just like a Chi-Chi's would. You can have dinner there during the luncheon day and you could also rent the place out for a reception or a coming out party, or whatever. What those exact numbers will be, we don't know. The problem is that we can always bring in less than our maximum load, but we can't go more, so we believe that for the numbers we would like to do, certainly for wedding receptions, it is probably going to take more than the 75 spaces we have now and the 200 people, or something like that that you could get in there with that. Hope that answers your question."

WARREN "Partially, you are here because Central Inspection is sending you here because of the square footage that you are going to have and the type of business and that would be a requirement, as opposed to maybe just being a wish of yours?"

CHRISTENSEN "Partially, yes. Central Inspection says 'if you want more parking, this is where you have to go to get it'. This place is obviously going to hold a lot more than that potentially."

GAROFALO "My question is that the current parking that you would have without the additional parking would satisfy your needs for a restaurant?"

MAGANA "I don't believe so."

CHRISTENSEN "Because part of that parking falls in the residential zoning, we can't use that parking. If we could use it, we would be in pretty good shape. But they will not allow us to use that parking because it is improper zoning. It is paved right now."

GAROFALO "I am talking about the current parking that you would have without the additional parking. Would that not satisfy your needs to open a restaurant?"

CHRISTENSEN "If we could use it."

GAROFALO "Why couldn't you use it? Isn't it on your property?"

CHRISTENSEN "They will not allow that. It is not zoned properly. That is why we are here."

GAROFALO "I don't follow."

CHRISTENSEN "It is a residential zoned situation, and we are Light Commercial."

GAROFALO "Well, that is what I am talking about. In your Light Commercial area. Fireside Lanes had parking."

CHRISTENSEN "Yes, but it was on the residential zoning parcel at that time, but at that time, it was okay to use. In 1988, they changed that."

GAROFALO "Maybe staff can clear it up for me. I am not getting this."

GOLTRY "From looking at their site plan from where the parking stalls are lined out, it looks to me like 73 to 75 spaces are totally on their side (zoned 'LC'). Perhaps you could rearrange them and maybe have a few more, but that would give them a projected restaurant occupancy of around 225 people, which is still a smaller restaurant than 1,100."

BARFIELD "I guess my question is, what is the policy in terms of what would be the required number of parking spaces they are seeking?"

CHRISTENSEN "If we were granted the Conditional Use, we would have 231 spaces, and we are figuring that right at 15 square feet."

KROUT "You are asking per occupant, one parking space for every three occupants and I think that is how the 231 spaces apparently can support 700 occupants."

CHRISTENSEN "It is 693."

MAGANA "And that was given to us by the City."

WARREN "I sure want to be considerate of all of the testimony we have heard here, mostly in opposition to this. But I would like to ask our counsel a question, if I could. We are kind of dealing with two subjects here. One is a piece of property zoned as proper Limited Commercial for the business and then the other question we got is a land use question for this other land."

CARRAHER "Mr. Warren, I'm sorry, but I want to make sure that we have had all of the questions that are of the applicant, and then we can move on. I know that I have been jumping around, that is my fault, but I want to make sure that if there are any other questions for the applicant at this time, that we ask them now and then we can move to our question."

PLATT "I have a question of the applicant. Can you tell us and give us an example of a restaurant in Wichita that seats over 700 people?"

MAGAÑA "I'm sorry, Doctor, I can't. I am not really that familiar with that. I suppose there are some restaurants, and I don't know what the seating capacities are for some of the larger places in town."

PLATT "In other words, you are really talking about being the largest restaurant in Wichita?"

MAGANA "I really would have no idea as far as that is concerned. I don't know what the loads are on that. I'm sorry."

CARRAHER "Are there any further questions for the applicant?"

BARFIELD "Are you putting in a dance floor?"

MAGANA "Yes, there are plans to have a dance floor, a stage area or something. Certainly if we have wedding receptions or dances, things along those lines, we would need an area for that or for whether it was a band or a D.J. or whatever."

BARFIELD "And doesn't that take this out of the classification of a restaurant?"

KROUT "Randy Sparkman with Central Inspection may want to help me on this, but a Limited Commercial district permits restaurants, but it also permits we would probably call banquet halls. We don't have an actual category for that. It is where receptions and those sorts of things can happen. Again, that is a use that is permitted in that bowling alley where it is zoned Limited Commercial. Their problem is that they can't meet the parking requirements without going beyond the boundaries of that Limited Commercial area. But banquet halls and receptions is a permitted use, just like restaurants in the 'LC' district. They are asking not to be confined to a restaurant, but to be able to use this for a banquet hall/reception purposes as well."

MAGAÑA "Correct."

CARRAHER "Are there any further questions of the applicant? Seeing none, Mr. Warren, would you like to restate your question?"

WARREN "Okay. Joe (Lang), I would like to ask you a question. Basically, what we are going to get down to here eventually, is a decision on this piece of land that is brown up there on that previous map. It is zoned Multi-Family. The question is, what is the best use of that land? I would submit that I would doubt that it is going to be Multi-Family, which is what it is zoned for. So, we need to allow some other use for that land. If we based our decision to deny that use because we didn't want something on that commercial, would that be a good decision? Would it be one that would hold up?"

JOE ALLEN LANG, Law Department "This is a unusual case, as you know, because you are focusing quite a bit not on the parcel in front of you, but on an adjacent parcel, but in a sense, it is appropriate because you are talking parking for that adjacent use, and you cannot really consider them separately. So what you are considering, what you have before you, is the impact on the neighborhood from the use that you are looking at allowing and the parking is ancillary to this adjacent use.

So I think there is obviously an extent to which you can go ahead and consider the use of this adjacent property because they are tied together and what is before you is a Conditional Use so you have the right to set reasonable conditions on the use of this property. They are asking to use it for parking, so if that is what you want to do, then you can see what conditions you want to place on the use of that parking. I don't know if I have answered your question completely."

WARREN "I think what I am hearing you say is that the use might be all right but you could set conditions."

LANG "Right."

WARREN "We have the right to set conditions, and do we have the right to just deny it altogether...just deny it arbitrarily?"

LANG "Well, not arbitrarily, but reasonably, yes. We get into this with self-storage and car lots and car washes, which are Conditional Uses, and are all controversial usually because of their impact, and because of their impact on the neighborhood that is why they have to come to you. They are not 'be right', but 'conditional'. You can look at this specific case and the impact on the specific neighborhood and say either 'yes, this is good'; or 'yes, this is good, but we need to put conditions on it'; or 'no, this is not good'.

So any reasonable decision you come up with in those parameters, you are allowed to make."

HENTZEN "Mr. Lang, can you think of a use that could go in that building and use both lots like this request? Can you think of any other use?"

LANG "I would have to defer to the planners on that. Whether there is anything in the Code for 'B' zoning that could be tied in with an 'LC', I will have to defer to Marvin."

HENTZEN "What is going through my mind is if we put in regulations or conditions that prohibit the use of that property, the economic use of that property, and we deny this use, are we hanging out?"

LANG "As long as you have a reasonable basis. That is why you are all here to determine the impact. And while you can certainly set conditions and allow that use if you think that it just doesn't fit, it just isn't an appropriate use for this property, you would have the right to deny it, too. Obviously, there is some use that can be made of the property. It may not be one that they would want to use, but I am sure from a legal standpoint, we could find uses that could go in there."

HENTZEN "How about a car lot up there?"

LANG "Probably not. I don't know if Marvin wants to address this further on other uses that could go in there."

BARFIELD "What is the capacity in terms of occupancy of this building?"

KROUT "Randy, it would be good for you to come up since you have been dealing with this. It depends on the use."

RANDY SPARKMAN, Office of Central Inspection "It hasn't been set because we don't have any plans that accurately tell us what, in reality, is going to be developed within it. But if you look at the footprint of the building, the potential capacity, once again, could be as much as 1,000 or 1,200 people, at the maximum, again depending on the use of the building.

The parking that is being requested here will directly reflect on the amount of capacity that can actually be allowed in the building in the end."

JOHNSON "I have heard a lot of comment about no permit, red tag and all of this. Could you tell us what you observed? Were you at the facility?"

SPARKMAN "I have not been at the facility except when it was open as a bowling alley, but Jim Garcia, one of our inspectors, was called by a citizen in the neighborhood and reported that there was ongoing construction inside of it. It turned into an inspection just to find out what was going on there. When he entered the facility, he found that there was construction going on inside of it. Again, and I have to state this clearly, I have not been inside there, but it is my understanding from Mr. Garcia in discussion with him, that there was part of a stage constructed at this time. And that construction was brought to a halt. He ordered it brought to a halt."

JOHNSON "So basically the removal of the lanes and that sort of thing could have gone on without a permit?"

SPARKMAN "That would be correct, and of course, the Codes would require a permit before demolition is done for commercial activities."

JOHNSON "And before you could occupy it?"

SPARKMAN "Absolutely. Before it could be reoccupied."

JOHNSON "What about floors. Let's say that they were putting new flooring down. Typically that wouldn't be a permitted use?"

SPARKMAN "No, we look at structural requirements as requiring permits not cosmetic, typically."

JOHNSON "Do you have any idea how big this stage was?"

SPARKMAN "No, sir, I do not. I'm sorry."

CARRAHER "Are there any further questions of the speaker? Thank you, sir. Are there any further questions or commentary? What is the pleasure of the Commission?"

MCKAY "I think somebody said there were 75 parking spaces presently there?"

KROUT "On the 'LC' zoned property."

MCKAY "Okay. You have 75 parking spaces. I think Code, under this classification is 3 spaces. Three people per space, that is 225 people that could go into this building, times 15 square feet; that would be 3,375 square feet and would accommodate 225 people with nothing happening. They could do it today, correct?"

KROUT "Yes. Using just the 'LC' zoned property."

MCKAY "That's what I am saying. Just by taking the building now and utilizing what is there, they can have a restaurant or whatever they are going to have and 225 people could be present."

PLATT "I just wanted to say that I certainly appreciate the Principal of Cloud School being here today and someone from the School Board, too. I think in the time I have been on the Planning Commission, this is the first time we have had anyone here from the School Board, and I would certainly hope that you folks would go back and suggest to the rest of them that we would like to see you here again. It is good to have someone from the schools and the School Board here."

BARFIELD "However, sir, she is not here representing the School Board. She made that quite clear."

PLATT "I understand that."

BARFIELD "Now, the other side of the coin is that we look at this, and in the staff's report here, even if this request were to be approved, they would fall far short of the number of parking spaces that are required for either a restaurant or a dance hall."

KROUT "Or the maximum occupancy that would otherwise be permitted."

BARFIELD "We are talking about here, 550 spaces for a dance hall and 366, and either way, they are going to be far short if this was to be approved."

WARREN "He could limit the occupancy."

BARFIELD "But he doesn't want to do that. He wants full utilization of the building."

JOHNSON "Marvin, since this is a Conditional Use, I just want to give an example. In the event that it was approved, and I think that the number was determined, I think there would be 231 spaces, which you could have an occupancy load of three per space, which would be 693 people. If that was approved today, and I am sure that the neighbors would watch this facility, in the event that they discovered that there was something not being followed that was within the Conditional Use, the Conditional Use could be immediately taken away and they couldn't operate. Could you elaborate on that at all?"

KROUT "I think that Condition No. 5 does that. I think what Condition No. 5 says 'the amount of area utilized for the restaurant and party rooms shall be limited by the amount of parking provided'. Maybe it needs to be amended to say 'and the occupancy permitted shall be limited by the amount of parking provided'. Then, if there were repeated violations of those occupancy requirements, for example, you would be able to terminate the Conditional Use and say 'this can no longer be used as parking for that use that is in the 'LC' district'."

JOHNSON "And I guess that is the point. I am glad to see that it is a Conditional Use rather than a zoning case in here-- wanting us to change it to 'LC', and then once it was changed, anything can happen. At least we know what the bases are."

I appreciate the opposition that has been here and how they have spoke their piece. I know there were probably alcoholic beverages sold to a bowler that is having a party at the bowling alley and they could have drank one too many, and there could be one in the dance hall that does. I don't want either one of those cases to ever have to deal with. But I think we are down to determining whether we can use this parking that has been being used by this building, and we talk about redevelopment of the core area and some of these older areas, and here is somebody trying to do it. I do like the Conditional Use better than if it was in here for rezoning that property."

KROUT "I think that is what No. 5 is intended to do, and I would suggest that you amend that wording to say also that the occupancy, also, in addition to the amount of area, the occupancy will be limited by the amount of parking provided. But also, you see in Condition No. 4, it says 'on-site security' has to be there and it has to control outside nuisance activities. So if there is a lack of control and repeated violations and problems in the parking lot, the intent there is to say that that is a violation of the Conditional Use and you can no longer use this parking lot and use the Zoning Code to enforce that."

CARRAHER "Are there further comments or questions regarding the item?"

OSBORNE-HOWES "I am having difficulty and I would sure like to hear some comments from someone who might be negatively about it as well as positively. On one side of it, I look at the fact that we approved The Venue, which is located right across the street from a school; although I don't think their capacity is anywhere near 1200. On the other hand, I look at the bowling alley and I am guessing that its use or its capacity is probably less than 1200. I am looking at that area and it is pretty much surrounding by residential, a park, a school, and I am looking at something with a capacity of 1200 and I am a little concerned about that, too. So I guess I would just like to hear some comments."

WARNER "I agree with that. The scenario of 75 parking places that they have now allows something like the occupancy of 230 people. I tend to agree with a lot of the opposition that I don't think that we should set up a lot of conditions that the neighborhood has to enforce before any action is taken to correct them. It looks to me like we are setting up something that would be a negative to the area. I guess that is where I am leaning at this point in time on this."

MCKAY "I am ready to make a motion."

MOTION: Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The land to the north, east, west, and southwest of the application area is developed with institutional (elementary school) and parks and recreation uses. These properties are zoned "SF-6" except for a community center that was never rezoned from "LC" when it was converted from a grocery store to a community center. The properties across 25th to the southeast are retail, zoned "LC," and the property to the south includes a church, zoned "LC" and residences, zoned "SF-6." The suitability of the subject property for the uses to which it has been restricted: It is inconceivable that the property could be developed with "B" Multi-family use, given the character of the surrounding land uses of parks and the school. Its only realistic use is as a buffer zone or as ancillary parking. There are other commercial uses available such as fitness center and general retail that would not require as much parking and would not pose the enforcement issues related to (1) determining the percentage of alcoholic consumption, with the corollary issue of whether they are falling within the classification of drinking establishment and/or night club that requires a "Conditional Use" based on proximity to school, park, church, and residences, or (2) ensuring that the occupancy load does not exceed available parking. So long as the building is used for a bone-fide restaurant or gathering place with alcoholic consumption comprising less than 50 % of total consumption, and the occupancy does not exceed the parking provided, the use of the ancillary parking would seem a reasonable use of the "B" zoning district. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the "Conditional Use" would allow intensification of the commercial site imbedded within an institutional/park setting. In addition, unless the approval is conditioned by reducing the size of the establishment or by providing additional off-site parking, it would result in overflow parking into the neighborhood. This introduces new conflicts between the residential and commercial areas. Finally, any consumption of alcoholic beverages near the school is viewed as a conflict with the anti-drug efforts of the school district. However, as long as the sale of alcoholic beverages are below 50 % of that of all food and beverages, it is defined as a restaurant with a drinking establishment license and does not require a "Conditional Use" for a drinking establishment. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is not in conformance with the Wichita Land Use Guide. Redevelopment of the property does support the policy of encouraging revitalization and investment within the area; however, the investment should be such as to encourage continued neighborhood redevelopment. If occupancy levels and issues with alcoholic beverages and other nuisances are adequately controlled, a restaurant/gathering place could be viewed as a complementary use to the surrounding park and community center facilities. The proposed ancillary parking would be considered in conformance with the "Conditional Use" requirements for ancillary parking. Impact of the proposed development on community facilities: One major impact is increased traffic demand. Another impact could be the increased enforcement necessary to ensure compliance with occupancy issues and to regulate any alcoholic consumption and nuisance issues related to the restaurant and its parking facilities.) I move that the request be denied.

MCKAY move, **BARFIELD** seconded the motion.

MCKAY "The reason I am making a motion to deny is because under the present conditions, without coming in here, they could have an eating/drinking establishment; have between 225 and 230 people without a Conditional Use. I feel that if they need that many more parking spaces, they talked about them having a drinking establishment when it was bowling, but 89 to 90 per cent of the bowling alley was lanes. It is not a restaurant area. You go into a bowling alley and a very minimal amount of it is other than where you throw the ball down. That is the main reason why that under the present conditions they could have an eating/drinking establishment of 225 to 230 people. It still doesn't answer what some of the opposition said, but I can't visualize a place with 1,100 or 1,200 people in there in that area. Period. They would park in the park and everywhere else. That is why I made the motion to deny."

CARRAHER "Are there any questions of commentary regarding the motion on the floor?"

WARREN "I would like to ask a question of Marvin. If this were to come back to us as a rezoning case, would Neighborhood Residential permit parking?"

KROUT "Do you mean Neighborhood Retail?"

WARREN "Yeah, Neighborhood Retail."

KROUT "Office and Neighborhood Retail permit parking by right for an adjacent commercial use."

WARREN "Something tells me we would have a hard time with this if this were a rezoning case to deny this application. I am just bringing that up."

BARFIELD "Basically, I am saying that I would be in support of this motion. From my standpoint, the attorneys made reference to the similarity between what they have proposed and the bowling alley. The bowling alley operated there for a great number of years, and as far as I know they never made a request for additional parking. Secondly, the way I see this, this is a new business, they haven't established the necessity for additional parking at this time. It is an imaginary thing. I think if they would come back to us in 6 months or a year after they have been operating and show the need or necessity for this parking, I would be much more in favor of it."

MARNELL "I am going to vote against the motion. I have gone and looked at this property. That lot that you are looking at there as an existing parking lot for that building, and that is the parking lot that they can't use. This isn't going out into a residential area and taking up residential lots that are being used for residential purposes, and converting them to commercial purposes. We have people here changing the nature of the use of that existing land and that existing parking lot simply because they don't agree with the use of the building. I am going to vote against the motion."

I will add further that that area can sorely use some redevelopment, and this would go towards that area. Thank you."

PLATT "I would just respond to the last comment that what we see up there is a vacated street, not private parking. Under the proposal it becomes private parking."

JOHNSON "I just want to second the comment. I would not want to approve a 1,200 seat facility, but if they could get 231 spaces and whatever that calculates to, as long as it is understood, and the comment that was made that the responsibility be put back on the homeowners', I really think that the applicant has to understand what he is signing himself to and he would have to enforce that. I think that is what Code Enforcement is, and different people here in the City, so I am not going to support the motion."

WARREN "Well, I agree with Commissioner Marnell. I am going to oppose the motion on the basis that I think we are going to see it back in here as a rezoning case. "

KROUT "Let me suggest that because you would be looking at findings of fact, and you did talk about, to some extent what could be done with the existing use, but you might want to incorporate in your motion that the intensity of the use would not be in character with the surrounding uses; that there has been substantial opposition demonstrated in this matter, that there is some potential for detrimental impacts because of the alcohol use and there has even been testimony that there would be an extraordinary effect on some public services like policing because of the scale and the nature of the uses that are adjoining."

MCKAY "I don't disagree, but I don't want to go into all of that detail, so I will just add to the motion that it will be a detriment to the neighborhood and that it was turned down by the neighborhood organizations unanimously without going into all of the detail that you just said."

AMENDED MOTION: That the request be denied on the basis that that the intensity of the use would not be in character with the surrounding uses; that there has been substantial opposition demonstrated in this matter, that there is some potential for detrimental impacts because of the alcohol use and there has even been testimony that there would be an extraordinary effect on some public services like policing because of the scale and the nature of the uses that are adjoining, and that it was turned down by the District Advisory Board."

MCKAY moved, **BARFIELD** seconded the motion.

MARNELL "I don't think we have an application here before us to make that parking lot itself a drinking establishment, and I think that your comments don't match with the case."

CARRAHER "Are there any further questions or commentary regarding the motion?"

GAROFALO "I just want to comment on that last comment. Our attorney said that we could take into consideration the use of the other property because it relates to it."

MOTION: That the question be called.

MICHAELIS moved, **BARFIELD** seconded the motion.

VOTE ON THE MOTION: The motion for the question carried unanimously (12-0).

VOTE ON THE AMENDED MOTION: The motion carried with 9 votes in favor (Platt, Osborne-Howes, McKay, Barfield, Warner, Michaelis, Hentzen, Carraher and Garofalo) and 3 in opposition (Johnson, Warren and Marnell).

10. **CON2000-00048** - Troy Botkin (owner and co-applicant); Brandon Steven Motors (co-applicant) request a Conditional Use to allow vehicle and equipment sales (outdoor) on property described as:

The West 200 feet of the South 190 feet of the Southwest Quarter, except the South 40 feet and the West 30 feet for roads. Section 17, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas. Generally located on the northeast corner of Central and Rock Road.

CARRAHER "If any of you in the gallery are here for this item, it has been withdrawn and will not be considered at today's meeting."

CARRAHER "Before we go to the next item, I would like to yield the floor to Dr. Platt for an announcement."

PLATT "Thank you. I am part owner of a building engaged in renting letting floor space to communication firms for the location of antennas. I am currently President of the Board of Directors of that building. Prior to previous cases, I have discussed this situation with our legal staff and was told that because the applicants were not the communications firms that businesses seeking to build towers, which would be rented to the firms, that I did not have a conflicting financial interest.

Given the number of cases before us today; however, I have given the problem considerable thought--particularly about the perception of any conflict of interest that I might have in terms of being associated with any vote. As President of the Board of Directors of our building and personally involved in the negotiations for leases with companies whose names you will hear this afternoon, my name will be on the contracts if we sign them. Consequently, I have concluded that I should not participate in cases 11 through 17."

CARRAHER "So, for the record, Dr. Platt will not be participating in cases 11 through 17."

11. **Case No. CON2000-00046** - World Impact, Inc. c/o Al Ewert (Owner); Horizon Telecommunications, Inc. and Cricket Communications, Inc. (Applicants); Ferris Consulting c/o Greg Ferris (Agent) request a Conditional Use for a 125 foot high communication tower, on property described as:

That part of Lot C, Walnut Grove Addition to Wichita, Kansas, Sedgwick County, Kansas, described as commencing at the intersection of the north line of the SE 1/4 of Sec. 9, Twp. 27S, R-1-E of the 6th P.M., Sedgwick County, Kansas and the west line of Mathewson Avenue as established in the plat of Replat of part of Lots C and D, Walnut Grove Addition to the City of Wichita, Sedgwick County, Kansas; thence west, along the north line of said SE 1/4, 150 feet; thence south, parallel with the west line of said Mathewson Avenue, 90 feet for a place of beginning; thence continuing south, along the last described line, 60 feet; thence west, parallel with the north line of said SE 1/4, 60 feet; thence north, parallel with the west line of said Mathewson Avenue, 60 feet; thence east parallel with the north line of said SE 1/4, 60 feet to the place of beginning. Generally located on the southwest corner of 17th Street North and Mathewson.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The owner is seeking a Conditional Use to permit the construction of a 125-foot high monopole tower (see attached elevation rendering) by Horizon Telecommunications, Inc. for use by Cricket Communications, Inc. The proposed site is zoned "B" Multi-Family Residential. The Unified Zoning Code requires a Conditional Use for Wireless Communication Facilities over 65 feet in height in the "B" Multi-Family Residential zoning district.

The proposed tower would be sited on a 3,600 square foot area located south of 17th Street North on the east side of I-135. The site plan (attached) depicts a 60-foot by 60-foot compound with the tower located in the center of the compound and the ground-level communication equipment located in the eastern portion of the compound (see attached renderings of ground-level equipment). The site plan depicts an 8-foot high chain link fence with barbed wire around the entire compound. The site plan indicates that the ground-level equipment would be screened by evergreen trees around the north, east, and west sides of the compound. The site plan also shows that the tower would be partially obscured from view by existing trees on the south and a nonconforming billboard on the north. The site plan shows that access would be provided to the site through an access easement to 17th Street North, a four-lane arterial street.

The character of the surrounding area is primarily residential with industrial uses located to the northwest and separated by a major barrier (I-135). The properties surrounding the site in all directions are zoned "B" Multi-Family Residential. The properties to the north are developed with duplexes. The properties to the east and south are developed with single-family residences. The property to the west is McAdams Park.

The application indicates that the proposed tower is needed for part of a planned initial build-out of a wireless phone system by Cricket Communications, Inc. (see attached RF engineering evaluation). The justification for the request (attached) indicates that existing towers along I-135 are located too far to the north or south and do not provide adequate coverage. The justification also indicates that an existing AM radio tower located north of the site is impractical for use (see attached letter on AM radio towers).

The application also indicates that an existing self-support lattice tower at Little School to the northeast had not been made available to be rebuilt as of the date of application. Correspondence with school district staff (see attached) indicates that the school district is in the process of making their towers available for reconstruction. Additionally, temporary structures such as "cellular on wheels" could be used in the interim to provide limited service to the area while issues involving the availability of the school tower are resolved.

CASE HISTORY: The site is platted as part of the Walnut Grove Addition, which was recorded on February 5, 1890.

ADJACENT ZONING AND LAND USE:

NORTH:	"B"	Duplexes
SOUTH:	"B"	Single-family residences
EAST:	"B"	Single-family residences
WEST:	"B"	McAdams Park

PUBLIC SERVICES: No municipally-supplied utility services are required. Access to the site is proposed from 17th Street North, a four-lane arterial street.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

RECOMMENDATION: Planning staff finds that the proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area, especially when interim solutions such as "cellular on wheels" are available. Second, no additional landscaping is proposed to further obscure the tower from view from the residential areas to the south and east. Finally, the proposed tower does not preserve the pre-existing character of the area. The proposed 125-foot high tower would be located only 60 feet from the nearest residential structure, and a total of four residential units would be located within 200 feet of the proposed tower. Such an encroachment would change the character of the area and would decrease the desirability of residential units in an area that is identified as a Re-establishment Area by the Comprehensive Plan. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be **DENIED**; however, if the MAPC finds the request appropriate, Planning staff recommends that the MAPC make appropriate findings and that approval be subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 125 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
- E. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 25% of the structure height and future loading expansions to accommodate communication equipment for at least four wireless service providers.
- F. The monopole shall be located in the northern portion of the compound and shall be setback at least 60 feet from property zoned "SF-6" located to the south.
- G. The existing trees located south of the compound as indicated on the site plan submitted with the application shall be maintained and supplemented by additional landscaping planted and maintained according to a landscape plan approved by the Planning Director. The landscape plan shall provide shade trees (including existing trees) at least

every 30 feet along the entire length of the south and east property lines of Lot C, Walnut Grove Addition. The landscape plan also shall provide for densely planted evergreen trees around the entire perimeter of the compound.

- H. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- I. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- J. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
- K. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- L. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The character of the surrounding area is primarily residential with industrial uses located to the northwest and separated by a major barrier (I-135). The properties surrounding the site in all directions are zoned "B" Multi-Family Residential. The proposed 125-foot high tower would be located only 60 feet from the nearest residential structure, and a total of four residential units would be located within 200 feet of the proposed tower.
- 2. The suitability of the subject property for the uses to which it has been restricted: The proposed site is zoned "B" Multi-Family Residential and could be developed with a residential use. Wireless communication facilities in excess of 65 feet in height in the "B" district may be permitted as a Conditional Use, but typically should conform to the guidelines of the Wireless Communication Master Plan.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Existing landscaping on the site would only partially obscure the view of the proposed tower, which would lead to a negative visual impact from the tower on nearby residential properties, especially given the proposed tower location within 60 feet of a residential structure. Such an encroachment would decrease the desirability of nearby residential units.
- 4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area, especially when interim solutions such as "cellular on wheels" are available. Second, no additional landscaping is proposed to further obscure the tower from view from the residential areas to the south and east. Finally, the proposed tower does not preserve the pre-existing character of the area. The proposed 125-foot high tower would be located only 60 feet from the nearest residential structure, and a total of four residential units would be located within 200 feet of the proposed tower. Such an encroachment would change the character of the area and would decrease the desirability of residential units in an area that is identified as a Re-establishment Area by the Comprehensive Plan.
- 5. Impact of the proposed development on community facilities: Access to the site is proposed to be from 17th Street North, a four-lane arterial street, so no negative impacts on community facilities are anticipated.

CARRAHER "Are there any ex parte contacts that need to be disclosed?"

MCKAY "I was contacted by both applicants. They sent some information but it had no bearing on the way I will vote."

MARNELL "I received written information but it won't affect my vote."

CARRAHER "I am assuming this is for all Commission members that you were all contacted by the afore mentioned?"

WARNER "We received printed material from both agents."

CARRAHER "We just wanted to note that for the record. With that in mind, Mr. Knebel, the floor is yours."

KNEBEL "I think I will take a little extra time and go through the first of the seven cases for these towers and then if you will all listen intently on the first case, I promise I will just gloss over the others. They are essentially the same staff report, there are very few differences between them and staff's position is nearly the same in all instances.

The first case before you is a request for a Conditional use to construct a 125-foot monopole tower. That tower would be constructed by Horizon Telecommunications and it is intended to be used, at least initially, by Cricket Communications. The proposed site is located at 17th Street, just east of I-135 and is zoned 'B' multi-family. The 'B' multi-family district permits a wireless communication facility up to 65 feet in height with an administrative permit. If it exceeds that height, then a Conditional Use is required.

The site is surrounded by residential properties, primarily to the east and to the south with a park to the west across the Interstate and an industrial area to the northwest. There are some residential properties immediately to the south, a small lease area 60 feet by 60 feet with access off of 17th Street. There are some existing trees in the area with the tower located in the middle of the compound. The site is rather close to some residential structures. There are a number of towers in the area.

The application indicates that the applicant has originally attempted to locate this at Little School and the site was not made available by the school district in a manner that was timely to the applicant and therefore additional sites were sought that applies essentially to every case that you are going to have before you today and is one of the crucial elements. We do have a member of the school district here to speak to that and we will let them address any questions that you have regarding that.

I am sure you all will recall that we recently adopted a Wireless Communication Master Plan. That plan was adopted as an element of the Comprehensive Plan in September. It provides a number of guidelines that should be used when determining where to site a facility such as this and then once a siting decision has been made, how that facility should be designed. In comparing the application against those guidelines, the Planning staff found a number of factors that caused us to recommend against the request. The first one is that the proposed facility does not utilize existing towers in the area. I think that is primarily the nature of the correspondence that you have received from the applicant, and I think we will let the agent for the applicant address their differences of opinion with us regarding that issue.

The second issue that we found with this one is that it does not provide sufficient landscaping in the form of tall trees to partially obscure the tower from the view of nearby residential properties and then the application also does not preserve the pre-existing character of the area. If you recall the slide I showed, and then again you can see it here on this site plan (indicating), this was the proposed location of the tower and (indicating) this is somebody's bedroom, right here. In the opinion of staff, placing a tower that close to an existing residence is out of character with any tower placement that has been approved in this community to date. That is one of the factors that is causing us to recommend denial.

If, however, the Planning Commission does feel that the request is appropriate, we have listed a set of conditions under which we think it should be approved if that is the Commission's decision. I won't go through every one of them, but one of them is that the tower be designed for future height extension up to 25% that would provide additional ability to locate antennas at this location without requiring the additional construction of a tower. We are also asking the monopole, rather than being placed in the middle of the compound, be placed further to the north to get it as far away from the residential structure that is located to the south, that the existing trees on the site be maintained in addition to planting trees along these two property lines to provide a screen from the residential properties that are the nearest to it so that when they do look at it, they have to look up and over some trees to actually see it. We are also requiring that the site be approved by the Federal Aviation Administration. I will stand for questions."

CARRAHER "Are there any questions for staff regarding the item?"

BARFIELD "First of all, let me say that one of the main problems that I have, and I am very disappointed that the surrounding and effected neighborhood has not been advised nor notified that this request was even on the table. Second, I would ask you to describe to us, in terms of feet, how many feet is it from the proposed location of this tower to the property line of the house to the south?"

KNEBEL "The distance to the residential structure itself is 60 feet. I didn't include the distance to the property line. I would say it is in the neighborhood of 40 feet to the property line. I did fail to mention that this case was heard by the District Advisory Board. They voted 5-3 to disapprove the request. They listed the reason as being that the proposed tower is too close to existing residential buildings; would change the character of the neighborhood and they also agreed with the staff comments and the staff report."

CARRAHER "Are there any further questions for our staff. Thank you, Mr. Knebel. Would the applicant like to speak to the item?"

GREG FERRIS "Mr. Chair and members of the Planning Commission I represent World Impact and the companies that have signed leases with them, Horizon Telecommunications and Cricket Communications, who have leased space on this tower. I would like to submit some documents for the record to try and save some time.

You have a volume of information from me, and I apologize. But I felt like rather than spend a great deal of time that I might explain it before I got here. However, because this is the first of four applications, I will take some time to go into a little bit more explanation. First of all, just a little brief explanation of Cricket Communication. Cricket Communication is a cellular communication company that has a little different take than AT&T or Voice Stream or some of the companies that you have seen represented here before. AT&T and those companies are mainly looking for in-car coverage and some in-building coverage. Cricket, however, with their offering of \$29.99 unlimited service also is looking for folks that might be able to use this in their house. It may be, as people move into and out of a neighborhood, they would just take the same phone with them and not pay the \$50 set up charge, etc., so this is an area they believe, particularly in this area that will be a high demand area for their service.

One of the primary reasons that staff has recommended disapproval on our applications today has been to deal with the school towers. I have provided a narrative, but I just want to go summarize a few things briefly. You have something dated February 26, 1999 from the associate superintendent that tells you that they plan to have something in place to deal

with towers. That was in 1999, February 26. Practically a year ago, some of you might recall, I was here for AT&T and staff recommended denial of a tower and they also cited using a school tower, and stated at that time that the schools had planned, in a very quick manner, to have those school towers available. That was in December of 1999.

Now we are in November of 2000, and I will tell you that it is my opinion, and this is a very educated opinion, because I have spent many, many hours in negotiations and discussions with the school system that these towers will not be available for a very long time. They may tell you otherwise, but they have been telling us otherwise for virtually three years. You have the documentation, but I want to identify a couple of other things that I think are important. Whether or not the school towers are available is irrelevant. I have also provided you with documentation that shows clearly that it is more expensive to rebuild a school tower than it is to construct a new ground built.

The Wireless Plan could not be more clear on one point. That point is that a site is only available space if it is economically and technically feasible. It goes on to describe something is economically feasible if the cost of rebuilding an existing facility is no more than the cost of building a new facility. I have provided documentation that clearly points out that that is just not the case. It is far more expensive, almost double the cost. So whether or not they are available, even though they are not, is not the point. The point is that it is more expensive to rebuild them.

So let's talk a little bit about this site because I think this is an appropriate site. First of all, if you will look at the map, while it may be characterized as residential, I think if you will look at the map you will see that it is really not residential in character. With the exception of these homes here (indicating), these are all vacant. There is nothing really going on there and these houses right here (indicating) there is not much residential that is on the area. What you do have, instead, is an Interstate Highway. You have an Interstate highway that all along here has silver light poles that extend approximately 100 feet to 110 feet in the air by the time you go from the ground to the top of the light pole. Significant height. This tower will be located right here (indicating). One of the reasons we put it in this location, instead of any of this other area was to push it up against the highway. The Master Plan is very clear that it wants us to try and use an existing tree line, which is here (indicating). There is an existing billboard which obscures it, and also the highway, which obscures it.

So the Master Plan couldn't be more clear that this is a spot that is suitable for a tower. Other than these residential properties right here (indicating), which we have not had any communication from any of those folks that they oppose this and they were all in the notification area, we don't believe that this area is. This area is wide open here (indicating); this is industrial. So we believe that the character of this neighborhood is not as residential as you might be led by some of the initial slides. I think you can see that clearly from the overhead.

This site is also one of the reasons we put it in the corner, to take full usage of the trees and foliage that was there to try to comply with the Master Plan. We have no problem with staff's recommendation. If you would like for us to push this a little further to the north, we don't have any problem doing that. That is not an issue to us and we will certainly comply with that as a condition.

This lot is also owned by World Impact. While that really isn't normally a consideration, I think it is as I get down into how this complies with the golden rules. I think the fact that World Impact, and we originally tried to buy this site from World Impact, and they said that they would like to have an ongoing revenue stream to try to continue some of the service and work that they do in that area. They will be netting approximately, over the next ten years, \$100,000 for use in this immediate area. This is a service that will be provided. Their main office is very close to this area; they mainly serve the residential communities and the residents in this area, so we believe that this is an excellent site, when you take into consideration the highway, the open space, the trees, the billboard, and those things.

The Master Plan guidelines require that we preserve the existing character of the area, and as I think I have pointed out, you have a lot of vacant ground, a highway to the west. We believe it does that. We are to minimize the height of the tower--125 foot versus some of the 150 or 170's you will have today. We believe we have minimized the height of this area--it is relatively short. It minimizes the silhouette, which is another requirement, by construction of a monopole versus some other types of uses. We have used colors to blend it in. This color will be similar and will blend nicely into the view of the highway and of the light poles. It is placed in an area where part of the tower is screened by the highway, the billboard and the trees. We will accept the landscape requirements that staff is suggesting; therefore it will be screened.

The Golden Rules, we are all familiar with. I would just like to show how this complies with the majority of these. The zoning and uses and character of the neighborhood are primarily an elevated highway; it has significant industrial property and will fit into this area. We believe that there has never been any documentation whatsoever to show that the removal of these restrictions will detrimentally affect nearby property. I think if Scott will go out and look at Central and Maize, there is a tower--it may not be 60 feet from those folks' bedroom, but those \$140,000 to \$150,000 homes have a tower that is well within 100 to 150 feet of their back yards. It is very close. I represented that district for 8 years and never had a phone call that told me that it had had a negative impact on anything in their area. There are towers virtually throughout this community that are near residential like that and it has not affected property values, so there is nothing to show that it will have a detrimental impact.

This property has been vacant for over 10 years, so the length of time subject properties remain vacant certainly should be a consideration. World Impact has tried to sell this property or develop it, and it has been unsuccessful. They have owned it for 9-1/2 years.

Relative gain to the public, health, safety and welfare as compared to the loss of value or hardship imposed upon the applicant; we believe there is no negative here, but we do believe that there is not only a hardship on the applicant--Cricket Communications needs a site in this area, and I think it will create a hardship that you saw from the slides--that it will be very detrimental, but also the loss of revenue to World Impact--while a property-owner may not have that big of an impact, when you have the budget of World Impact, I believe that the detriment of losing that type of revenue could be significant."

CARRAHER "Mr. Ferris, your time is up. Do you require an additional minute?"

FERRIS "If I could have a couple of minutes. I promise on the next ones we will be able to be much more brief."

MOTION: That the speaker's time be extended for 2 minutes.

MICHAELIS moved, **BARFIELD** seconded the motion.

FERRIS "Thank you very much. We believe this conforms with the Comprehensive Plan. I have identified the elements of the Master Plan that it does conform with. I believe that the Master Plan was adopted for this very purpose to show us how these sites could be utilized. It will have no negative impact on the development of community facilities. The park across the street will not be impacted nor will anything else, nor will it be a burden on any community facilities.

There has not been any opposition spoken to us, there may be somebody here today that we don't know about, but other than that, there has not been opposition from any of the residents in this area. We believe that this is a good application. We believe that it will help the community, not only by providing Cricket Communication to this area, where they will have low cost phone service, but also by helping a very worthy community agency and their ability to serve this area. We also believe that it is an appropriate site because of its location next to a highway. We believe that it will blend in, that it is in conformance with the policies that you have adopted, that the City Council has adopted, and we would recommend that you approve this application today. I certainly would be glad to answer any questions. We are willing to comply with all of the conditions that staff has recommended."

CARRAHER "Are there any questions for the applicant regarding this item?"

BARFIELD "Mr. Ferris, at the very beginning, you heard me speak with Scott about the fact that I was very disappointed that the neighbors, the neighborhood, the landowners have not been made aware that this application is on the table. You made mention made of the fact that there has not been any opposition. Are you in possession of any evidence that these neighbors have been notified about this request?"

FERRIS "I do have possession of evidence that everybody within 200 feet of the corners of the compound have been notified."

BARFIELD "To the east?"

FERRIS "Certainly. Everything within 200 feet of this area has been notified. It is a regulation and Scott can testify to that."

BARFIELD "How were they notified?"

FERRIS "By regular mail."

BARFIELD "As of 5:00 last night, the neighbors to the east had not been notified by anybody."

FERRIS "There may be neighbors to the east that are outside of the 200 foot perimeter. That is very possible. They would be over 200 feet because that is the notification requirement. There was nobody at the District Advisory Board to speak in opposition to this."

BARFIELD "That is true because they had not been notified. Now, let's move on to another point. You made mention of the fact that World Impact had attempted to sell this party, but could not. However, you earlier stated that the company that you represent has tried to purchase the property but they would not sell it. Is that correct?"

FERRIS "Well, that is because they asked us, 'do we have to sell it to you, or will you lease it to us?' Certainly to us it doesn't make any difference whether we own it. We just assumed that selling it would be easier for them and easier for us. They have tried to develop this as a tower. Whether they sold it to us or leased it to us, we still would be the applicant on this case and it would be irrelevant, Mr. Barfield, whether or not they have not been able to sell it to anybody but us."

BARFIELD "Now, also, to the north, there is probably about 50 acres over there that is totally vacant, no residents around there. It currently has at least one tower there. Have you made any attempt to purchase property over there or to locate a tower in that area?"

FERRIS "No. That is an AM tower in that area. As you get that close to AM towers, you have certain RF issues that come into play, No. 1. No. 2, Mr. Knebel was correct in that our original center of our search ring was north of this spot. To go any further north of this, we would not have been able to have continuous coverage along I-135. So as you go

north of here, you have the issues of coverage. We did evaluate some other towers and sites in this area and I think he showed you as we go north that it creates problems and gaps in our areas.

So the fact that the AM tower was there, we would have had to have been tucked in there behind those other residences, which would have still been the same issue that you are discussing today, and we would have been closer to the AM tower, which would have caused us some issues."

MCKAY "I think Mr. Ferris answered my question about the 50 acres and the other towers north."

OSBORNE-HOWES "Mr. Ferris, did you say that it is more expensive to reconstruct a tower than to build a new tower?"

FERRIS "Certainly. I think I sent you some cost estimates. Those were actually bid estimates, actual costs. Particularly on the school sites, they will be very difficult to do. First of all, you can't take down a tower during the daytime when kids are around the school. You have to do after hours' work to remove that tower, so you have the cost of those extra hours of work. You also have the demolition costs. On a school tower, their Request for Proposal requires you to replace all of their equipment at no cost, so you have that cost that is also associated with the switch-over. You also will have additional wiring, and that is the bid that you have there, I believe. It is about \$80,000 difference."

OSBORNE-HOWES "You also referred to wording in the Master Plan that said you had to chose the lesser of the two options."

FERRIS "I don't have to. I certainly could choose to rebuild the tower, but the Master Plan states that I have complied with the Master Plan if it is not economically feasible to rebuild a tower. We must demonstrate that it is not economically feasible to do that."

OSBORNE-HOWES "I guess I am just struggling with that because knowing this when you participated in the development of that Master Plan, it sort of set up a nice win/win situation for you. At least I am perceiving that. The way the Plan is written, it allows you an automatic out whenever you want it. I am concerned."

FERRIS "I will tell you, Ms. Osborne-Howes, that Marvin and I have discussed that and we you are going to do a six month evaluation, and it certainly was not our intent when it was in there, we didn't necessarily think about this in the future; however, there are some reasons why, and maybe there are some thresholds, but if something is virtually twice as expensive, that certainly makes it very difficult to comply with some of the FCC regulations that you have to allow competitive nature if you are going to require us to do things that are twice as expensive. I certainly think there might be some question, at least, as to how that might be appropriate."

OSBORNE-HOWES "I am kind of hoping that we hear from school representatives to see if that is correct. That is just a question that I had. Thank you."

CARRAHER "Are there any further questions of the applicant?"

KROUT "At some point, I think the staff would like to offer some comments and maybe give Mr. Ferris an opportunity for a rebuttal regarding the issue of the cost of the towers. But I guess my question is that there was one more piece of information that Scott had that came in today that he neglected to provide and I think we need to provide that for the Planning Commission and for you, Mr. Ferris, so you can respond to it.

We received just today a request for a building permit to reconstruct a private dispatch tower that is nearby just to the north and west of this site in the industrial area. That would be, in our opinion, more compatible with the Master Plan than to build the new tower. Is Cricket aware of that, and have they evaluated the potential to use that proposed rebuilt tower?"

FERRIS "We have not been privy to that information. I don't know what tower, exactly that you are referring to, or the location. If there is a tower that is available on an expeditious manner in that area and someone is going to construct one, I believe Cricket would be amenable to locating on that tower. I think that it is also possible that since our application is in and I believe it conforms with the Master Plan as a good application, that may be too far north. I would have to evaluate that. I might tell you that because of what we went through with the school system, as far as timing, we don't have time for deferrals and waits, that if you would like to make as a condition that if that tower is viable and usable that we would locate on that tower and we would have to provide documentation before such time that we were able to pull a building permit. I wouldn't have any problem with that, and it may be that whoever is going to rebuild that....who is going to rebuild that, do you know?"

KROUT "Scott may have more information, or there may be someone in the audience who has more information."

FERRIS "If they are building a tower that is capable of locating Cricket on there, or they may be interested in locating on our tower instead of rebuilding and just taking that tower down. So, I believe to have two towers in that area would not be in conformance with the Master Plan. I believe, though, that you can certainly approve this tower today contingent upon...we used to do this all of the time under the old statutes, that we couldn't build that tower until such time as we demonstrate. If you wanted to make that as a condition, I certainly have no problem whatsoever accepting that as a condition. There are representatives here from Lucent and I believe that that would be an accurate statement, wouldn't it, Kim, that if there is a tower there that meets your RF criteria that you would have no problem co-locating on that?"

However, until that tower is a reality, we really have chased a lot of shadows in towers in this area, and we would really be opposed to just a denial based on that without our ability to review that."

HENTZEN "Mr. Ferris, this is very close to that house just south of it. I was up there. Somewhere in the documentation or the statements that I have read, somebody complained about a noise. You probably have heard the noise on these electric lines when they have transformers. You can hear buzzing and buzzing. Are your engineers able to tell us, does that create any noise in the neighborhood?"

FERRIS "Jazz, an RF Engineer from Lucent is here. These things don't emit noise. Most of the noise that is associated with towers is associated with guy towers and the wires and the whistling of the wind through those towers. This is a monopole. Monopoles and RF from cellular communication does not emit noise, so noise would not be an issue."

HENTZEN "Okay."

CARRAHER "Are there any further questions of the applicant at this time? Thank you. We will now move it to the gallery. Is there anyone in the gallery who is wishing to speak in favor of the item? Is there anyone in the gallery who is wanting to speak in opposition to the item? Seeing none, we will move it back to the Commission."

BARFIELD "I have a question for Marvin. Whose responsibility is it to notify the effected residents on these types of requests?"

KROUT "It is the applicant's responsibility to give us a notification list and to post a sign. It is our obligation to do the newspaper advertisement and to get the notice out to the property owners within that required radius."

BARFIELD "Do you have any evidence that that was done in this case?"

KROUT "I think we do. Scott, have you looked at the file when that issue came up?"

KNEBEL "Yes, and the notices were sent out. If you are questioning why didn't people over in this location (indicating) did not receive a notice? Is that what you are questioning, east of Mathewson?"

BARFIELD "Yes."

KNEBEL "That is outside of the 200 foot radius. The 200 foot radius goes to about the center line of Matheson."

BARFIELD "To the east, the first house on the corner there?"

KNEBEL "Yes, that is further than 200 feet from that lease compound. It is 225 or 250 feet."

BARFIELD "Was there a sign posted there on that property?"

KNEBEL "The applicant just said that he did post a sign, yes."

BARFIELD "It hasn't been there for the last ten days."

KNEBEL "I can't verify whether it has or not. I was there about 20 days ago."

BARFIELD "Can you verify that it was ever placed there?"

KNEBEL "No. It was not there when I was there, about 20 days ago."

OSBORNE-HOWES "I should have mentioned this earlier. I brought this up when I was asking Mr. Ferris a question. I would like to hear from someone from the school district if we have a representative here."

CARRAHER "That seems fair enough. Mr. Muci."

DARREN MUSI "Good evening. I live at 3714 North Rushwood Court, here in the capacity today as Director of Purchasing for the Wichita Public Schools."

OSBORNE-HOWES "The question I have is that Mr. Ferris talked about it being expensive and not only the expenses involved in using a tower owned by the school district, but also the timing issue and that these towers would not be available for some time. I would just like to have comments about that. I think they apply, not only to this one, but to several of the cases."

MUSI "You've got several different questions there. I think the first thing that probably needs to be addressed, and that is a question that Mr. Barfield asked me personally yesterday and earlier today. It is a plan and a goal and we will have a tower management and marketing firm identified by the November 27th School Board meeting. That is on a Monday. You have copies of communication presented that went back and forth between myself and Robert Hammond, who is the Associate Superintendent and also Scott Knebel, identifying a December 1 date. That is the date that we have identified

internally as a 'drop-dead date', if you will, when we will have somebody on board that can manage and market our tower concerns for the district."

OSBORNE-HOWES "What was that date?"

MUCI "December 1. I believe that is a Friday. Through our research, we have learned that if a new tower needs to be erected, that could, perhaps, be done within a 15 to 30 day window."

OSBORNE-HOWES "And what about having the towers that are there available?"

MUCI "That would have to be an unknown. I can't speak for a firm that may be managing our towers. What we have learned through our research is that there would be some time taken to research the existing towers, determining the RF issues, etc., etc., placing into their marketing materials and guidelines. Essentially a lot of that is done through Website these days. The context that we have made indicates that that could perhaps be done within as little as a 7 to 10 day period. We would expect that those towers would be available on that December 1 day."

OSBORNE-HOWES "So less than a month?"

MUCI "Yes."

CARRAHER "Since we have Mr. Muci at the podium, are there any questions specifically for Mr. Muci while we have him there?"

HENTZEN "Darren, you have probably seen this chronological list from Greg Ferris?"

MUCI "Yes, I have."

HENTZEN "It has the questions and the dates of the school board ownership of the properties. It really comes down to like, on the Millionaire program, 'is that your final answer?'. What I am suggesting is that in over a years' time, they have been asking the same question and have not gotten a final answer. I am asking, you just said you were going to hire a firm. They might say, 'fellas, it will take us six months'."

MUCI "That is certainly a possibility."

HENTZEN "I just visualize that. Surely they are not standing there ready to go today with final answers. So, I really want to pose that question. Are these school properties going to be available, and when? I really think that if they are going to be available and can be used, that it will eliminate a whole lot of discussion because the providers that need the facility could get it okayed and it really would come up here and the staff could take care of it. So, back to the question. Are they going to be available, and when?"

MUCI "The answer that I previously gave you, and let me clarify. I am here as a staff member of the Wichita Public Schools. I have just been on board since early August. So I cannot speak for the Board of Education, although we do have a sitting board member here in the audience. As a staff member, we will be making a recommendation to the Board of Education on Monday, November 27. That is the will in the statement that I have made previously. Let's presume that they will approve the recommendation. We have no reason, at this time, to believe that they would not. We will have a tower management marketing firm on board by December 1. That is as strong of a statement that I can make to you today. This is the culmination, and Mr. Ferris has done an excellent job of itemizing and delineating the time line over the past nearly two years now. But this will come to an end on December 1."

MICHAELIS "Just to follow up on Mr. Hentzen's question, that is where my question was going, too. I think it would have a lot more credence if you could put into that recommendation or make it a condition of the marketing firm that they actually have a workable plan in place within a specific period of time. Say that is 6 month or whatever. Here again, based on track record, the track record is telling me that if you have somebody on board by December 1, it may be December 1, 2003 before they come back to you with a recommendation. That is not going to help us in making these decisions. I think it is important that when we make this decision, that we make it based on the fact that just because you are hiring somebody, it does not mean a plan is in place."

MUCI "I will not disagree with you on that point, sir. I cannot speak for the potential of the firm that will be in place. I do not know what they could possibly say; however, I can tell you that we have narrowed our field to three firms, we are continuing to hold discussion with those firms over the remainder of this week and early part of next week. We do feel confident that they will be able to be on board December 1 and manage our concerns on behalf of not only the school district but the community as a whole."

MICHAELIS "Do you think it would be possible to put in your proposal to them as a requirement that you would want a specific time?"

MUCI "As part of a contract? Absolutely. We have had discussions along those very lines."

JOHNSON "I guess to carry on with that same situation, I also want to look at the situation and I don't know much about towers, but I am sure that some of these towers apparently are not capable of taking additional carriers, so they are going

to have to be reconstructed. I guess I hope that whoever is looking at this will look and determine the number of towers you have, what the capabilities are, because I can see where there may be a possibility, from an economic standpoint, where a new tower is built and maybe the school one is taken down and the school can use a new tower where there are some other carriers. Probably can't. But this thing is just getting clear out of hand as far as trying to determine where you can do it, where you can't do it and there are going to be more towers."

OSBORNE-HOWES "I guess my question is what is the role specifically, then of the consultants that you are going to recommend? If they are a marketing firm, are they hired to develop the plan or are they hired to act as your liaisons with businesses in the community?"

MUCI "Both. Both to market our towers, we recognize that there are perhaps some capabilities and some options available to private contractors to make use of these towers. Also, to manage the towers. School districts aren't usually in the tower management business, so we needed to find somebody that could do that for us."

OSBORNE-HOWES "So that will be your point of contact, your liaisons, and they will be hitting the ground running?"

MUCI "Yes. We would expect that they could do that. The firms that we are having conversations with are players nationally, and in some cases internationally, in this industry. And confidence is high that we will have somebody that can take care of us."

CARRAHER "Are there any further questions for the speaker?"

BARFIELD "Can you tell me how many towers USD259 has available?"

MUCI "We have 51 through 53, right in that range. A majority of them, a very strong majority of them are two years of age. They are all lattice towers, structurally sound, and I believe that there is a capability of increasing the height by 25 percent. They are designed primarily to provide and meet our internal network concerns."

BARFIELD "As a follow-up...as I understand, and you are not a tower expert and neither am I, but from everything that you have been able to ascertain, would there be a need to have to rebuild or tear down any of these towers?"

MUCI "An excellent question. My answer would be not necessarily. What we have learned through our discussions with some of the vendors is that taller is not necessarily better. In fact, 'under fill' was a term that we heard throughout one of the conversations. Essentially, we have built up a lot of towers in the area, and it is very important to have that above the trees coverage. But in many cases, especially some of the newer technologies that are entering the areas, what we are learning is that we need that under fill. We need to be able to get in between the houses, under the trees, into the homes so that there is coverage inside the vehicles, on bicycles, etc., etc., for any of the citizens that may be carrying different types of technology."

WARNER "Sir, will this new marketing firm have the authority to make a decision on these towers, or will they have to, in turn, go back through the school board bureaucracy to allow them to act, or to allow somebody else to act?"

MUCI "Bureaucracy. Is that what we are doing right now?"

WARNER "You've got it."

MUCI "It is intended to be a team effort and we will be requiring that they come to us again, as noted. Those towers were constructed to facilitate the network signal of all of the districts' telephones and computers."

WARNER "Is 'us' staff or the school board? Who is us?"

MUCI "Us would be the school district, as a whole, and certainly we are going to want to be good community players in this, but they would come back to the district and we would have an internal representative that would essentially be managing these on an internal basis."

Primary concern. What we cannot have is an antenna that might somehow conflict with one of our signals. Our research is telling us that more than likely that won't be happening, but we need to make absolutely certain that that will not happen. We cannot be in position where our phone lines will be down or our networks will be down for any great length of time."

WARNER "Does this management firm make that decision and pass that on to staff?"

MUCI "Absolutely."

WARNER "This is going to be kind of a long, drawn-out affair, isn't it?"

MUCI "I would hope not. Again, our research has found that we are not the only school district that is involved in decisions of this magnitude. It works."

HENTZEN "You are talking about hiring a consulting firm or a management marketing firm."

MUCI "Actually, it is a tower management marketing firm."

HENTZEN "Okay. Well, not to many months ago, we went through where the city hired a consultant to work on the Master Plan. I thought it was going to help us. But the first bunch of tries that came up are coming up today, and the City people thought that there was only one out of the whole bunch that could be recommended. I am not sure whether it was one or two. We spend a lot of money on consultants, and I don't see anything that is working very well. In fact, regarding the school district, the citizens of Wichita approved a \$284 million deal, and now we can't move forward with this. The City's reasoning is 'well, we need to get the school board's attention'.

I will tell you that December 1st, and I would say that by December 2 if you can't tell us what is available, we need to consider that, not 6 months from now, or a year from now."

MUCI "I certainly respect that you need to make a decision, but it is rather humorous to see that the school district is the one that is impeding progress in the community."

HENTZEN "Well, what else is new?"

CARRAHER "Are there any further questions of Mr. Muci? Seeing none, would you want to close out with a statement?"

MUCI "None at this time, sir."

CARRAHER "Since Mr. Muci was asked, I feel it only fair that Mr. Ferris be given the opportunity for his two minute rebuttal, if he so chooses."

FERRIS "Thank you very much, Mr. Chair. I appreciate very much the opportunity to depart from protocol and have my two minutes. In all due respect to Mr. Muci, Mr. Muci did come to this process very late. I am not an expert on a lot of things, but I am certainly an expert on dealing with the school system on using their communication towers. I have spent hundreds of hours, and it isn't all their fault, believe me. They have state law that only allows them to negotiate an agreement for 10 years, which means even if they find a management company who will let somebody use these towers, they can only be for 10 years, and then they have to give the tower back to the school district. That is a state law. It is written in black and white. You cannot get around that.

Other issue. We have a bond issue that unless you can co-locate on their tower, you must buy that tower out of the bond issue. Those towers range from \$27,000 in this case to \$47,000 with a couple of others we have today. You must pay that up front before you can use that tower. This is an issue that this management company is going to have to spend time figuring out a way to get around. He went from 'we will have something in place' to 'I hope we have something in place'. From the course of when he first got up here to the end. You know what? I believe the school district honestly wants to have somebody in place. But that company will more than likely be to manage their equipment.

Let me read you something that I am a little surprised that Mr. Muci thinks they can use those towers for co-location. I will tell you that we know we can't, but also the district knows they can't. This is out of their own document that they provided to anybody that was interested in participating in this process. It says 'the district has been advised that the lattice towers currently used by the district are engineered for the sole purpose of mounting the district's microwave communication equipment. Consequently, any proposal that contemplates locating additional transmission equipment on these towers must include a proposal that would allow the district to purchase the existing lattice towers or move them from the lease'; which is the bond issue."

CARRAHER "Mr. Ferris, your time is up."

FERRIS "May I have just a couple more minutes, please? This is going to carry over into all of the cases."

MOTION: That the speaker's time be extended for two minutes.

HENTZEN moved, **WARREN** seconded the motion, and it carried unanimously.

FERRIS "I do apologize. I know how late it is. These towers, and I will tell you, and I will have somebody from Lucent come up and tell you if you would like, these towers are not structurally sound to handle a configuration for cellular PCS technology. There is no way they are. If they have a consultant that is telling them that these towers can be used for cellular PCS communication, then I hesitate to think how long it is going to take for them to figure out what it is going to take to be able to use these towers.

So apart from the \$30,000 that I have to pay up front, apart from the fact that that tower has to be given back to the school district after 10 years by state law, and would no longer be the property of whoever paid the \$180,000 to reconstruct that other tower, apart from the \$80,000 difference that it would cost to use those, these school towers are not going to be, he cannot tell you that these school towers will be available for use any time this year. He can tell you that he will have a marketing management company in place by December 1, and I am very glad for that. I started this process. I know what they have gone through. They have worked very hard, but those towers cannot be available. Not only do they have to select somebody; they have to negotiate an agreement with that company for the management and marketing of those towers.

They then have to turn around and negotiate an agreement with whoever wants to be on those towers, and that is assuming that they can overcome the 10 year hurdle, they can overcome the bond issue hurdle and all of those things. So, in all due respect to Mr. Muci, these towers are not available, and they are far more expensive than any communication company will be able to afford. Thank you very much for the time."

CARRAHER "Are there any questions for the speaker?"

KROUT "This is about a few things. First of all, I just want to say, for the record, that we haven't had a chance to analyze the cost estimates that were provided that showed the cost differences. I just looked at them for the first time this morning and I would have a lot of questions myself about how we arrived at those numbers. So I would not say that staff agrees that there is \$180,000 to \$102,000 difference between towers in this case or in the other cases that are coming. I think that someday we ought to sit down and look at those numbers more closely.

I want to give you my interpretation of what the Wireless Master Plan says, which may be a little bit different from Mr. Ferris', but we have a hurdle, we have a threshold that says if you want to build a new tower in the community, you cannot do it. There is no way you can do it unless you first prove that it is more costly to rebuild an existing tower than to build a new tower. That doesn't mean that you are automatically entitled to build a new tower if it is more costly to rebuild than to build a new tower. I think what you get into if it is more costly, is a balancing test. I think what you have to take into consideration in this case is that we are talking about not just one tower here but we are talking about at least 6 or 8 towers over the next--I think 7 towers on this agenda and at least 2 or 3 more on the other agenda where there are other options, where there are existing towers. The issue is how fast will the school district be ready. We have indicated in your report, although again, there is an expense, that there are temporary solutions to provide service if there is some period of negotiations that has to occur and if the project is delayed for a month over what it could be if they were able to get a permit to build a new tower at this location or the other locations that are requested.

The Master Plan says that the objective is to reduce the visual impact of towers while providing good service in the community. I think that that doesn't mean that we have to give an instantaneous approval when the long term solution to minimize the visual impact and reduce the number of towers is to make use of the resource that is there."

BARFIELD "I just want to say that I think that Mr. Muci, who is an invited guest here, should be afforded an opportunity, if he so desires, to address any of the comments Mr. Ferris made. I think two minutes would be sufficient."

CARRAHER "I can't see any reason to object if that is the pleasure of Mr. Muci. I did ask him beforehand when he was here addressing questions if he wanted to make any further statements. If your position has changed and there is something you would like to state for the record, I can't see any reason to object to allowing that. That would be a decision that is up to Mr. Muci."

MUCI "Thank you again, Mr. Chair. Maybe just a reiteration. Mr. Ferris is right, and with all due respect to him, we spent an incredible amount of time working internally, and it has been an incredibly challenging process for us. But what you have seen during the past three months, since about the middle of August is some activity that will allow us to again take control and take charge of this particular project. This will get done. We have some legal challenges. Those are being researched by our external legal staff. We feel confident that there will be an outcome that will be acceptable and beneficial, not only to the school district, but again to the community at large. I think I will end my comments there and thank you for allowing me to come back."

MARNELL "I have a couple of things to say with regard to this. I think it is a real shame that the school district didn't diligently pursue this. I think the whole community loses from this. I will also say that I doubt that by this time next year, at the rate they are going, that they will have this thing down to where it is something that is commercially usable by people in business. I know that part of it is state statutes and it is not easy to do and part of it is involved in the way they financed that whole project to begin with.

The existing towers, and I do have some expertise in that area from a past life, are very lightweight towers and could probably hold a small, two-way radio antenna, but they aren't going to hold cellular equipment. The Master Plan probably has a flaw in it that ought to be pointed out, that maybe we need to think about changing. Rebuilding towers so many times doesn't really mean rebuilding as people kind of think of--you go out and slap another couple of pieces of metal on it and all of a sudden, it is heavier duty. There is nothing they can do for these towers that is going to fix the problems of these towers. They were for light duty and that is what they do. That is what they are, and the kind of towers that these monopoles are that the cellular carriers use are radically different in terms of wind load and ice load. What they will take is radically different. So they are not compatible.

That notwithstanding, if somebody has the ability to develop a site with a minor burden, then I think that ought to be a consideration. These are going to be probably a considerable burden because of the fact that they have to buy out these towers and the methodology to do it, plus, in this case, I think it is unfortunate technology and some of these kinds of issues like we have seen, very, very fast, and the bureaucracies and even the law and copyright law and all of the things that go with trying to catch up with technology move a lot slower. Sometimes we have these unfortunate situations and I think this is one case. So I am going to support this with some changes, but I don't think we can wait on the school district."

MICHAELIS "I would just like to make a comment that is a general comment. I will make it now so that I don't have to make it on every one. I think it is really time that we sit back and take a look at 'is this something that we all use?' If I would ask for a show of hands in the audience of how many people have cellular phones in their pocket, and I know of one that definitely does, and I hope that he isn't here to speak against the towers. (Laughter here) But the point is that it is a fact of everyday life. We use these. It is our technology; it is a sign of the times. They are not that visually much of an eyesore. Nobody pays attention driving down the Interstate to light poles. Nobody pays attention driving down the road to electric poles and KG&E can come down and put 150-foot towers every hundred feet or wherever they want and nobody cares. I am having a hard time understanding why these are so objectionable. We all use them, we all need them and they are a fact of life. They are all done very nicely, they are landscaped, and they look good. I am just having a hard time understanding why this is something we are so adamantly opposed to. That is just a personal comment.

BARFIELD "I have been on this Commission for a year and three months now. As far as I can remember, this is the first time we have had anybody from the Board of Education come before us and address us. That would indicate to me that certainly at this time, regardless of what has happened in the past, it would indicate to me that at this time, the Board of Education is making progress. They are on top of this. They are working in conjunction with us.

Having said that, I am ready to move on beyond the School Board. In particular this case. Now, my question to you, Marvin, is that you mentioned the rebuilding of a tower in the near vicinity to this. Can you tell me, first of all, how much further north than the proposed location here is this tower? Secondly, can you tell us when this will be built or rebuilt?"

KROUT "I think Scott can respond to that better than I. A building permit apparently has been submitted."

KNEBEL "The application was actually turned in to the Planning Department today. I don't know if it has actually made its way to Central Inspection or not, but the proposed location is right here (indicating). There is an existing private dispatch tower at that location. The Code does permit the reconstruction of a private dispatch tower, including an extension in height up to 25%, with a building permit only as long as it meets the criteria of the Wireless Communication Master Plan."

BARFIELD "However, Mr. Ferris himself has indicated that he has no desire or doesn't see where it would be appropriate to have two towers in this close proximity to each other. So based on that, we will have to ask Mr. Ferris what we are talking about. Thirty days? Sixty days?"

FERRIS "What was your question?"

BARFIELD "I was trying to find out if he has a time frame first of all, so I can pose my question."

KROUT "Thirty or sixty days until what?"

BARFIELD "Before this tower would be available or completed."

KROUT "I think that a building permit has been submitted. Commercial building permits take maybe up to two weeks before they are approved. I think in the case of a tower it would take less time than a typical commercial building, which is much more complicated, so I would guess that it would be less than a week before, if the materials are on order, that it could be under construction in a week or two."

BARFIELD "Having heard that, Mr. Ferris, my question to you would be will this time frame be sufficient for you to move up and make contact with whoever this company is to see if this would be workable between yourself and them?"

FERRIS "Mr. Barfield, as I stated before, and this is about a three week process, Marvin, just so you know, but that would not be onerous to us. If this site would work, we obviously need to run it through our RF Engineering to make sure that it is not too far out of the search ring to be able to work those kinds of things. If we are allowed to do that and this site was going to be available, we have no problem locating on that tower. However, we would just ask you to approve the tower today and make that as a condition before we could get a building permit because we have a 2 week period, and with Thanksgiving in there, it is actually almost 2-1/2 weeks before we would even be allowed to file for our building permit. So that time frame would almost overlap and would give us the opportunity to work through those things. We have no problem with that whatsoever."

OSBORNE-HOWES "I have been thinking about this. I guess I feel that as long I have been on the Planning Commission, which as you all know, is a long time, we have wanted to hear from the School Board and the School District, and I feel a little strange today that we finally have gotten them here and we have basically said 'thanks but no thanks, we don't need you, and it is just too late and you are s.o.l.'. I think, at the same time, I guess I also don't like to see a whole industry sit and wait, and wait, and wait forever.

So what I heard Marvin say, and going back to this case, is that he hasn't really had enough time to analyze some of the costs, and I think there are still some things up in the air. I am sure that there is not a majority here who would feel like that, but it seems to me that we have a little bit of a narrow window of opportunity, which means that maybe we could log down some of these costs. I know we have a real long agenda next time, but one month from today, we could get back to this, and you know that by that time we would know if the School Board had approved something; if this management team had come on board and had really hit the ground running and if they could give us some information about these towers. I just think it would be a good idea to defer this."

JOHNSON "Susan, I somewhat agree with you, and I know that you have been on here a while. I have been on here a while, too, but I am wondering if don't approve this, based on then utilizing the schools if it comes about, or this other tower, or whatever, if that won't at least send a message out there saying that we have to make a decision. You have three weeks, four weeks, or whatever. If it doesn't come about, then there is going to be a tower. You just as well tell us yea or nay.

I am the same way. I almost get the feeling that the poor gentleman from the School Board, that may be one of the first requirements of a new job there, to bring this in front of us (laughter here). If he can make it through this, he gets to stay. I wouldn't have wanted to be in his position.

I guess I am asking Marvin, too. Do you see any possibility of some kind of an approval, based on those kind of parameters, since it is a Conditional Use, so that somebody gets the message that we have got to make a decision on these?"

KROUT "I can't suggest the wording for you today of what it would take, in terms of the School Board's readiness and preparedness for you to add a condition to these requests that would say go or not go. I am not prepared to do that."

JOHNSON "The thing I see, just like he has stated, that what I see it is going to come down to is from the School Board's standpoint they have quite an investment in the towers, and they don't want something messing up what the primary use of those towers are. I can understand that. I do think we have to move on."

CARRAHER "Mr. Knebel, is there anything you want to add? Okay."

WARREN "Well, you know, we have been on this for as long of a time that we are going to be allowed to be on it. We have six of these to go."

KROUT "We have a meeting here, by the way, at 7:00 o'clock on the Comprehensive Plan."

WARREN "I understand that. I doubt if we are going to get all of the answers that we are going to need. I would not make the statement that I totally agree with Commissioner Michaelis. If this were a KG&E tower or a Southwestern Bell tower, we wouldn't even be looking at it."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is primarily residential with industrial uses located to the northwest and separated by a major barrier (I-135). The properties surrounding the site in all directions are zoned "B" Multi-Family Residential. The proposed 125-foot high tower would be located only 60 feet from the nearest residential structure, and a total of four residential units would be located within 200 feet of the proposed tower. The suitability of the subject property for the uses to which it has been restricted: The proposed site is zoned "B" Multi-Family Residential and could be developed with a residential use. Wireless communication facilities in excess of 65 feet in height in the "B" district may be permitted as a Conditional Use, but typically should conform to the guidelines of the Wireless Communication Master Plan. Extent to which removal of the restrictions will detrimentally affect nearby property: Existing landscaping on the site would only partially obscure the view of the proposed tower, which would lead to a negative visual impact from the tower on nearby residential properties, especially given the proposed tower location within 60 feet of a residential structure. Such an encroachment would decrease the desirability of nearby residential units. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area, especially when interim solutions such as "cellular on wheels" are available. Second, no additional landscaping is proposed to further obscure the tower from view from the residential areas to the south and east. Finally, the proposed tower does not preserve the pre-existing character of the area. The proposed 125-foot high tower would be located only 60 feet from the nearest residential structure, and a total of four residential units would be located within 200 feet of the proposed tower. Such an encroachment would change the character of the area and would decrease the desirability of residential units in an area that is identified as a Re-establishment Area by the Comprehensive Plan. Impact of the proposed development on community facilities: Access to the site is proposed to be from 17th Street North, a four-lane arterial street, so no negative impacts on community facilities are anticipated.) I move that we

recommend to the governing body that the request be approved, subject to the following:

1. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
2. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
3. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
4. The monopole shall not exceed 125 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
5. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 25% of the structure height and future loading expansions to accommodate communication equipment for at least four wireless service providers.
6. The monopole shall be located in the northern portion of the compound and shall be setback at least 60 feet from property zoned "SF-6" located to the south.
7. The existing trees located south of the compound as indicated on the site plan submitted with the application shall be maintained and supplemented by additional landscaping planted and maintained according to a landscape plan approved by the Planning Director. The landscape plan shall provide shade trees (including existing trees) at least every 30 feet along the entire length of the south and east property lines of Lot C, Walnut Grove Addition. The landscape plan also shall provide for densely planted evergreen trees around the entire perimeter of the compound.
8. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
9. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
10. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
11. Prior to the issuance of a building permit, the applicant shall demonstrate to the Zoning Administrator that another tower approved or constructed in the vicinity cannot be used.
12. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
13. Any violation of the conditions of approval shall render the Conditional Use null and void.

WARREN moved, **MICHAELIS** seconded the motion.

CARRAHER "We had two speaker's list before the motion was made. I want to give them an opportunity to speak."

BARFIELD "I just want to make the comment that Mr. Muci was here at my invitation today. I thought, after looking at the information that Mr. Ferris had sent out, in particular Items No. 14 and No. 15, that I would prefer to have Mr. Muci here and get it straight from the horse's mouth because there is room here for misinterpretation and I wanted him to be specific, as to whether we were discussing 'will' or 'plan'. I think he has done that. I just wanted to make that clarification."

WARNER "I would like to make a comment on the school towers. It looks to me like they are going to be available in the future, if they ever get their plan, marketing and whatever online to where they can produce. There are going to be more towers coming before us, I am sure, in the future that people are going to want to build. Up to this point, nothing has been gained and these people who are making applications need some answers. So, in my opinion, one of these days, the School Board is going to have these available, and when that day comes, somebody may be able to use them. Right now, they are not available and we can't use them. So, I contend that we go to the motion and proceed."

CARRAHER "Are there any questions or commentary in regards to the motion?"

OSBORNE-HOWES "I just wanted to double check. Mr. Ferris talked about his willingness to move the tower slightly, based on staff comments, and add some additional landscaping. Was that added in the motion?"

WARREN "It is in the staff comments."

OSBORNE-HOWES "But they were recommending denial."

KNEBEL "They were there if it was to be approved."

MARNELL "Did you put any kind of a time limit on the other site consideration?"

WARREN "Let's be reasonable. How about within 30 days on the last phase."

BARFIELD "Marvin, do you know, and nobody can say for a fact that the dispatch tower will be completed within 30 days. Are we prepared to say that?"

WARREN "We've got to give him an answer."

WARNER "We should be able to find out the information, whether that is in his location, whether they can use it, whether it is structurally sound for what they need before **(unable to hear here)**."

KROUT "We have no way of knowing whether or not they will continue with the building permit; whether or not the permit will be approved, what time it will be approved, or when they will begin construction. I think that is the reason for putting some sort of a time period on it."

BARFIELD "Is 30 days enough?"

WARREN "I think the question is how much can we ask him to hold up. I would like to call the question. Maybe we don't need a motion for it, but we aren't going to get out of here, Mr. Chair if we don't get to moving."

CARRAHER "Does anybody have any questions that have gone unanswered, or any new area that we haven't covered. I want to make sure that we have our bases covered before I move forward. Seeing none, we will move into a vote."

VOTE ON THE MOTION: The motion carried with 10 votes in favor.
Osborne-Howes opposed. Platt abstained.

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12. **Case No. CON2000-00044** - C & J LLC c/o Jerry K. Allen (Owner); Horizon Telecommunications, Inc. and Cricket Communications, Inc. (Applicants); Ferris Consulting c/o Greg Ferris (Agent) request a Conditional Use for a 150-foot high communication tower on property described as:

That part of Lot 1, Ray Allen Addition, Wichita, Kansas, Sedgwick County, Kansas described as commencing at the N.E. Corner of said Lot 1; thence with an assumed bearing of N 89 degrees 50 feet 30 inches W, along the north line of said Lot 1, 153.13 feet; thence S 03 degrees 11 feet 17 inches W, 17.89 feet for a place of beginning; thence S 03 degrees 11 feet 17 inches W, 65 feet; thence S 82 degrees 45 feet 59 inches W, 40 feet; thence N 00 degrees E, 60 feet, thence N 77 degrees 08 feet 54 inches E, 45 feet to the place of beginning. Generally located between Hoover and I-235 and north of 9th Street North.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed out the following staff report:

BACKGROUND: The owner is seeking a Conditional Use to permit the construction of a 150-foot high monopole tower (see attached elevation rendering) by Horizon Telecommunications, Inc. for use by Cricket Communications, Inc. The proposed site is zoned "LI" Limited Industrial. The Unified Zoning Code permits Wireless Communication Facilities up to 150 feet in height in the "LI" Limited Industrial zoning district with an Administrative Permit; however, the application for a Conditional Use was filed based upon planning staff's non-support of the request due to its lack of conformance with the Wireless Communication Master Plan.

The proposed tower would be sited on a 2,925 square foot area located between I-235 and Hoover and north of 9th Street North. The site plan (attached) depicts a 65-foot by 45-foot compound with the tower located on the eastern portion of the compound and the ground-level communication equipment located in the center of the compound (see attached renderings of ground-level equipment). The site plan depicts an 8-foot high chain link fence with barbed wire around the entire compound. The site plan indicates that the ground-level equipment would be screened by evergreen trees around the perimeter of the compound. The site plan also shows that the tower would be partially obscured from view by existing trees on the east and a billboard on the north. The site plan shows that access would be provided to the site through an access easement to Hoover, an unpaved collector street.

The character of the surrounding area is primarily residential with a single manufacturing business on the parent tract of the subject property and significant amounts of undeveloped land between Hoover and I-235. The properties north and south of the site are zoned "SF-6" Single-Family Residential and are undeveloped. The properties east of the site are zoned "SF-6" Single-Family Residential and are developed with single-family and institutional uses. The property west of the site across I-235 is zoned "MF-18" Multi-Family Residential and is developed with townhouses.

The application indicates that the proposed tower is needed for part of a planned initial build-out of a wireless phone system by Cricket Communications, Inc. (see attached RF engineering evaluation). The justification for the request (attached) indicates that existing monopole towers located west of the site along the Big Ditch and northwest of the site in Sedgwick County Park do not provide adequate coverage.

The application also indicates that an existing self-support lattice tower at Hadley School to the east had not been made available to be rebuilt as of the date of application. Correspondence with school district staff (see attached) indicates that the school district is in the process of making their towers available for reconstruction. Additionally, temporary structures such as "cellular on wheels" could be used in the interim to provide limited service to the area while issues involving the availability of the school tower are resolved.

CASE HISTORY: The site is platted as the Ray Allen Addition, which was recorded on July 5, 1973.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6"	Undeveloped	
SOUTH: "SF-6"		Undeveloped
EAST: "SF-6"		Single-family residences and institutional
WEST: "MF-18"		Townhouses

PUBLIC SERVICES: No municipally-supplied utility services are required. Access to the site is proposed from Hoover, an unpaved collector street.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

RECOMMENDATION: Planning staff finds that the proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area, especially when interim solutions such as "cellular on wheels" are available. Second, no additional landscaping is proposed to further obscure the tower from view from the residential areas to the east and west. Finally, the proposed 150-high facility does not conform to the compatibility height standard since it is proposed to be setback only 55 feet from property zoned "SF-6" located north of the site. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be **DENIED**; however, if the MAPC finds the request appropriate, planning staff recommends that the MAPC make appropriate findings and that approval be subject to the following conditions:

1. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
2. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
3. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
4. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
5. The monopole shall be setback at least 55 feet from property zoned "SF-6" located to the north.
6. The existing trees located east of the compound as indicated on the site plan submitted with the application shall be maintained and supplemented by additional landscaping planted and maintained according to a landscape plan approved by the Planning Director. The landscape plan shall provide two shade trees along the east property line of Lot 1, Ray Allen Addition from the north property line to the north line of the access easement and shade trees at least every 30 feet along the entire length of the west property line of Lot 1, Ray Allen Addition. The landscape plan also shall provide for densely planted evergreen trees around the perimeter of the compound.
7. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
8. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
9. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
10. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
11. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is primarily residential with a single manufacturing business on the parent tract of the subject property and significant

amounts of undeveloped land between Hoover and I-235. Residential property zoned "SF-6" is located within the compatibility height standard setback distance.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LI" Limited Industrial, and has been developed with an industrial use. Wireless communication facilities up to 150 feet in height in the "LI" district may be permitted with an Administrative Permit, but must conform to the guidelines of the Wireless Communication Master Plan. A Conditional Use may be granted to permit a wireless communication facility in the "LI" district that does not conform to the guidelines of the Wireless Communication Plan; however, the facility should conform to the guidelines as much as possible.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Existing landscaping on the site would only partially obscure the view of the proposed tower, which would lead to a negative visual impact from the tower on nearby residential properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area, especially when interim solutions such as "cellular on wheels" are available. Second, no additional landscaping is proposed to further obscure the tower from view from the residential areas to the east and west. Finally, the proposed 150-high facility does not conform to the compatibility height standard since it is proposed to be setback only 55 feet from property zoned "SF-6" located north of the site.
5. Impact of the proposed development on community facilities: Access to the site is proposed to be from Hoover, an unpaved collector street, so no negative impacts on community facilities are anticipated.

BACKGROUND: The owner is seeking a Conditional Use to permit the construction of a 150-foot high monopole tower (see attached elevation rendering) by Horizon Telecommunications, Inc. for use by Cricket Communications, Inc. The proposed site is zoned "LI" Limited Industrial. The Unified Zoning Code permits Wireless Communication Facilities up to 150 feet in height in the "LI" Limited Industrial zoning district with an Administrative Permit; however, the application for a Conditional Use was filed based upon planning staff's non-support of the request due to its lack of conformance with the Wireless Communication Master Plan.

The proposed tower would be sited on a 2,925 square foot area located between I-235 and Hoover and north of 9th Street North. The site plan (attached) depicts an 65-foot by 45-foot compound with the tower located on the eastern portion of the compound and the ground-level communication equipment located in the center of the compound (see attached renderings of ground-level equipment). The site plan depicts an 8-foot high chain link fence with barbed wire around the entire compound. The site plan indicates that the ground-level equipment would be screened by evergreen trees around the perimeter of the compound. The site plan also shows that the tower would be partially obscured from view by existing trees on the east and a billboard on the north. The site plan shows that access would be provided to the site through an access easement to Hoover, an unpaved collector street.

The character of the surrounding area is primarily residential with a single manufacturing business on the parent tract of the subject property and significant amounts of undeveloped land between Hoover and I-235. The properties north and south of the site are zoned "SF-6" Single-Family Residential and are undeveloped. The properties east of the site are zoned "SF-6" Single-Family Residential and are developed with single-family and institutional uses. The property west of the site across I-235 is zoned "MF-18" Multi-Family Residential and is developed with townhouses.

The application indicates that the proposed tower is needed for part of a planned initial build-out of a wireless phone system by Cricket Communications, Inc. (see attached RF engineering evaluation). The justification for the request (attached) indicates that existing monopole towers located west of the site along the Big Ditch and northwest of the site in Sedgwick County Park do not provide adequate coverage.

The application also indicates that an existing self-support lattice tower at Hadley School to the east had not been made available to be rebuilt as of the date of application. Correspondence with school district staff (see attached) indicates that the school district is in the process of making their towers available for reconstruction. Additionally, temporary structures such as "cellular on wheels" could be used in the interim to provide limited service to the area while issues involving the availability of the school tower are resolved.

CASE HISTORY: The site is platted as the Ray Allen Addition, which was recorded on July 5, 1973.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6" Undeveloped
SOUTH: "SF-6" Undeveloped
EAST: "SF-6" Single-family residences and institutional
WEST: "MF-18" Townhouses

PUBLIC SERVICES: No municipally-supplied utility services are required. Access to the site is proposed from Hoover, an unpaved collector street.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

RECOMMENDATION: Planning staff finds that the proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area, especially when interim solutions such as "cellular on wheels" are available. Second, no additional landscaping is proposed to further obscure the tower from view from the residential areas to the east and west. Finally, the proposed 150-high facility does not conform to the compatibility height standard since it is proposed to be setback only 55 feet from property zoned "SF-6" located north of the site. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be DENIED; however, if the MAPC finds the request appropriate, planning staff recommends that the MAPC make appropriate findings and that approval be subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- E. The monopole shall be setback at least 55 feet from property zoned "SF-6" located to the north.
- F. The existing trees located east of the compound as indicated on the site plan submitted with the application shall be maintained and supplemented by additional landscaping planted and maintained according to a landscape plan approved by the Planning Director. The landscape plan shall provide two shade trees along the east property line of Lot 1, Ray Allen Addition from the north property line to the north line of the access easement and shade trees at least every 30 feet along the entire length of the west property line of Lot 1, Ray Allen Addition. The landscape plan also shall provide for densely planted evergreen trees around the perimeter of the compound.
- G. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- H. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- I. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
- J. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- K. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is primarily residential with a single manufacturing business on the parent tract of the subject property and significant amounts of undeveloped land between Hoover and I-235. Residential property zoned "SF-6" is located within the compatibility height standard setback distance.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LI" Limited Industrial, and has been developed with an industrial use. Wireless communication facilities up to 150 feet in height in the "LI" district may be permitted with an Administrative Permit, but must conform to the guidelines of the Wireless Communication Master Plan. A Conditional Use may be granted to permit a wireless

communication facility in the "LI" district that does not conform to the guidelines of the Wireless Communication Plan; however, the facility should conform to the guidelines as much as possible.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Existing landscaping on the site would only partially obscure the view of the proposed tower, which would lead to a negative visual impact from the tower on nearby residential properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area, especially when interim solutions such as "cellular on wheels" are available. Second, no additional landscaping is proposed to further obscure the tower from view from the residential areas to the east and west. Finally, the proposed 150-high facility does not conform to the compatibility height standard since it is proposed to be setback only 55 feet from property zoned "SF-6" located north of the site.
5. Impact of the proposed development on community facilities: Access to the site is proposed to be from Hoover, an unpaved collector street, so no negative impacts on community facilities are anticipated.

KNEBEL "This is a Conditional Use request for a commercial communication tower 150 foot high. It is for the same user as the last case, Cricket Communications, to be constructed by the same company. The property is located along Interstate 235 between that highway and Hoover and north of Ninth Street as shown here on the slides. It is located between an industrial manufacturing building and a billboard.

There is vacant property to the north, multi-family property across the interstate. There are some houses to the east. There is a building on the property that the tower would be located on. The tower was originally proposed to be located at Hadley Middle School. I think we have had all of the discussion about whether that school is available. The same problems we had with the last case regarding the ability to use existing towers and the lack of landscaping to hide this facility primarily from these residential properties here (indicating), but also from multi-family residential here.

We also mentioned that the tower is located closer to residentially zoned property here in this location than the height standard would say that it should be; however, the applicant has pointed out to me that they own both properties, so it wouldn't be a burden on an adjoining property owner. There would be a lot of separate tracts, but the same ownership.

We have recommended denial; however, if it is approved by the Planning Commission we have some conditions of approval that we have recommended regarding landscaping for some trees in this location (indicating) and some trees in this location. We are recommending FAA approval and the remainder of the conditions that are listed on Page 4. The District Advisory Board considered this request and recommended it for approval."

CARRAHER "Are there any questions for staff regarding this item? Thank you, Mr. Knebel. Would the applicant care to address the item?"

GREG FERRIS "Mr. Chair, members of the Planning Commission, I will be very brief. I have submitted some documents for the record. This site, as Mr. Krout told me when he saw it, is a pretty good site. That is right. It is shielded by a billboard, it is in Industrial zoning. The only setback issue is from the property owner that owns their own property. We do take one issue after visiting with the lease tenant of the billboard. We would comply with all of the conditions that staff has recommended; however, we would ask that there not be a requirement to plant trees that are along the billboard. Instead, the D.A.B.'s recommendation was contingent upon approval in that Mr. Krout and I would sit down and work out a landscape plan. We would like to do that to the south of the industrial building if you feel it necessary to landscape further along the highway. Obviously, you can't plant shade trees in front of a billboard. It shades the billboard from view also, as well as the tower. The tower will obscure the view that the trees there would place, so we don't believe that that is a necessity. We will plant the trees along Hoover and we would ask one change also, even in our site plan that instead of a screening of evergreens around this compound that it be a solid wood fence. The reason being that there is a road there and that Mr. Allen uses that as a truck turn-around for this industrial building. We believe it can be adequately screened with trees along Hoover and a solid wood-screening fence.

Other than that, we would ask you to recommend it, based on the comments of the last case. We would also be glad to answer any questions that you might have."

CARRAHER "Are there any questions for the applicant regarding this item? Thank you. We will move it to the gallery. Is there anybody in the gallery who is here to speak in favor of the item?"

DAVID MOLLHAGEN "I am with Eller Media Group, which is at 4405 North Hydraulic. We are the tenant, we are the business, the advertising sign that is on this parcel. We have been in discussion with the people who want to put the tower in and we have no problem with the tower. But as was stated earlier, we do have a problem with shade trees being put in front of our billboard signs, as Marvin and I have talked about before. You shade a billboard, you can't sell it. If you can't sell it, we can't pay them money. So it would be very detrimental to their income flow from us if the billboard would not be able to be seen. That is our only comment. That is our only request is that the shade trees not be put in. We have

no problem with them putting in any type of landscaping and things. We have already talked about a lot of these things with the company that wants to come in, so that would be our only comment and request. Thank you."

CARRAHER "Are there any questions for the speaker? Thank you, Mr. Mollhagen. Is there anybody in the gallery here to speak in opposition to the item? Seeing none, we will move it back to the Commission. What is the pleasure of the Commission?"

MARNELL "Mr. Krout, do you think you can work out an agreeable landscape plan without the shade trees?"

KROUT "I am sure we can take into consideration the comments that were by the last speaker."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is primarily residential with a single manufacturing business on the parent tract of the subject property and significant amounts of undeveloped land between Hoover and I-235. Residential property zoned "SF-6" is located within the compatibility height standard setback distance. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LI" Limited Industrial, and has been developed with an industrial use. Wireless communication facilities up to 150 feet in height in the "LI" district may be permitted with an Administrative Permit, but must conform to the guidelines of the Wireless Communication Master Plan. A Conditional Use may be granted to permit a wireless communication facility in the "LI" district that does not conform to the guidelines of the Wireless Communication Plan; however, the facility should conform to the guidelines as much as possible. Extent to which removal of the restrictions will detrimentally affect nearby property: Existing landscaping on the site would only partially obscure the view of the proposed tower, which would lead to a negative visual impact from the tower on nearby residential properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area, especially when interim solutions such as "cellular on wheels" are available. Second, no additional landscaping is proposed to further obscure the tower from view from the residential areas to the east and west. Finally, the proposed 150-high facility does not conform to the compatibility height standard since it is proposed to be setback only 55 feet from property zoned "SF-6" located north of the site. Impact of the proposed development on community facilities: Access to the site is proposed to be from Hoover, an unpaved collector street, so no negative impacts on community facilities are anticipated.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
2. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
3. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
4. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
5. The monopole shall be setback at least 55 feet from property zoned "SF-6" located to the north.
6. The existing trees located east of the compound as indicated on the site plan submitted with the application shall be maintained and supplemented by additional landscaping planted and maintained according to a landscape plan approved by the Planning Director.
7. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
8. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
9. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
10. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
11. Any violation of the conditions of approval shall render the Conditional Use null and void.

HENTZEN moved, **WARNER** seconded the motion.

CARRAHER "Are there any questions or commentary in regards to the motion on the floor."

VOTE ON THE MOTION: The motion carried with 10 votes in favor (Hentzen, Warner, Warren, Marnell, Johnson, Barfield, Michaelis, McKay, and Garofalo) and 1 in opposition (Osborne-Howes). Platt abstained.

13. **CON2000-00042** - Discount, Inc. c/o James Aboud (Owner); Horizon Telecommunications, Inc. and Cricket Communications, Inc. (Applicants); Ferris Consulting c/o Greg Ferris (Agent) request Conditional Use for a 190-foot high communication tower, on property described as:

That part of the NW 1/4 Sec. 31, Twp. 26-S, R-1-E of the 6th P.M. Sedgwick County, Kansas, described as commencing at the S.E. corner of said NW 1/4; thence west, along the South line of said NW 1/4, 630 feet; thence north, parallel with the East line of said NW 1/4, 250 feet for a place of beginning; thence continuing north, along the last described line, 80 feet; thence east, at right angles, 80 feet; thence south, at right angles, 80 feet; thence west, at right angles, 80 feet to the place of beginning. Generally located south of the Big Ditch and west of Amidon.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The owner is seeking a Conditional Use to permit the construction of a 190-foot high monopole tower (see attached elevation renderings) by Horizon Telecommunications, Inc. for use by Cricket Communications, Inc. The proposed site is zoned "LC" Limited Commercial. The Unified Zoning Code requires a Conditional Use for Wireless Communication Facilities over 85 feet in height in the "LC" Limited Commercial zoning district.

The proposed tower would be sited on a 6,400 square foot area located south of the Big Ditch on the west side of Amidon. The site plan (attached) depicts an 80-foot by 80-foot compound with the tower located in the center of the compound and the ground-level communication equipment located in the eastern portion of the compound (see attached renderings of ground-level equipment). The site plan depicts an 8-foot high chain link fence with barbed wire around the entire compound. The site plan indicates that the ground-level equipment would be screened by evergreen trees around the north, south, and east sides of the compound. The site plan also shows that the tower would be partially obscured from view by existing trees on the south, west, and east sides of the property. The site plan shows that access would be provided to the site from Charles, an unpaved residential street.

The character of the surrounding area is commercial to the east with residential to the south and west and the Big Ditch to the north. The property north of the site is public right-of-way used for the Big Ditch. The properties east of the site are zoned "LC" Limited Commercial and "GO" General Office and are developed with a retail business and a medical office. The properties south and west of the site are zoned "SF-6" Single-Family Residential and are developed with single-family residences.

The application indicates that the proposed tower is needed for part of a planned initial build-out of a wireless phone system by Cricket Communications, Inc. (see attached RF engineering evaluation). The justification for the request (attached) indicates existing monopole towers located north of the site near I-235 and Meridian and west of the site near 29th and West do not provide adequate coverage at the heights available and would be significantly more expensive than a new tower to rebuild or modify to provide sufficient height. Additionally, the attached RF engineering evaluation indicates that insufficient coverage will be provided to residential areas north and west of I-235 and Meridian even with a lower tower height (150 feet); therefore, it is likely that an additional tower request will be submitted in the future to provide service to that area.

The application also indicates that an existing self-support lattice tower at Pleasant Valley School to the southwest had not been made available to be rebuilt as of the date of application. Correspondence with school district staff (see attached) indicates that the school district is in the process of making their towers available for reconstruction. Additionally, temporary structures such as "cellular on wheels" could be used in the interim to provide limited service to the area while issues involving the availability of the school tower are resolved.

CASE HISTORY: The site is unplatted. A use exception (BZA 45-94) request for trailer and vehicle rental on the larger tract on which the compound is located was denied by the BZA on January 24, 1995.

ADJACENT ZONING AND LAND USE:

NORTH:	Right-of-way	Wichita-Valley Center Flood Control (Big Ditch)
SOUTH:	"SF-6"	Single-family residence
EAST:	"LC & GO"	Retail and medical office
WEST:	"SF-6"	Single-family residence

PUBLIC SERVICES: No municipally supplied utility services are required. Access to the site is proposed from Charles, an unpaved residential street.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

RECOMMENDATION: Planning staff finds that the proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area, especially when interim solutions such as "cellular on wheels" are available. Second, no additional landscaping is proposed to further obscure the tower from view from the adjacent residential property to the west and the residential area located east of Amidon. Third, the proposed 190-foot high tower does not minimize the tower height. Since another tower would be needed north of the proposed tower to provide service to established residential areas, a lower tower (150 feet) could be provided on the subject property without increasing the total number of towers needed to serve the area. Finally, the proposed 190-foot facility does not conform to the compatibility height standard since it is proposed to be setback only 100 feet from property zoned "SF-6" located west of the site. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be DENIED; however, if the MAPC finds the request appropriate, planning staff recommends that the MAPC make appropriate findings and that approval be subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- E. The monopole shall be located in the northeastern corner of the compound and shall be setback at least 130 feet from property zoned "SF-6" located to the west.
- F. Access to the compound shall be from the commercial property to the east utilizing an existing opening on Amidon.
- G. Existing trees as indicated on the site plan submitted with the application shall be maintained and supplemented by additional landscaping planted and maintained according to a landscape plan approved by the Planning Director. The landscape plan shall provide shade trees (including existing trees) at least every 30 feet along the Womer/Amidon frontage north of the existing parking lot. The landscape plan shall provide shade trees at least every 30 feet along the west property line in the gap between the existing hedgerows. The landscape plan shall provide for densely planted evergreen trees around the north, south, and east perimeter of the compound.
- H. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- I. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- J. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
- K. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- L. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is commercial to the east with residential to the south and west and the Big Ditch to the north. Residential properties zoned "SF-6" are located within the compatibility height standard setback distance.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" Limited Commercial, and could be developed with other commercial uses permitted by the zoning district. Wireless communication facilities in excess of 85 feet in height in the "LC" district may be permitted as a Conditional Use, but typically should conform to the guidelines of the Wireless Communication Master Plan.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Existing landscaping on the site would only partially obscure the view of the proposed tower, which would lead to a negative visual impact from the tower on nearby residential properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area, especially when interim solutions such as "cellular on wheels" are available. Second, no additional landscaping is proposed to further obscure the tower from view from the adjacent residential property to the west and the residential area located east of Amidon. Finally, the proposed 190-high facility does not conform to the compatibility height standard since it is proposed to be setback only 100 feet from property zoned "SF-6" located west of the site.
5. Impact of the proposed development on community facilities: Access to the site is proposed to be from Charles, an unpaved residential street, which would lead to an increase in commercial traffic on a residential street.

CARRAHER "With regards to all of these issues, I want to make sure that we stay above ex parte disclosures, that everybody was contacted by the same people with regards to the first item. Would that be correct?"

Several Commissioners said yes here.

KNEBEL "This is a request for a 190-foot high tower, constructed by Horizon for Cricket Communications, located just south of the Big Ditch and west of Amidon. There are residential properties to the south and to the east across Amidon and Womer. The proper that it is located on is vacant commercial property. The height of the tower exceeds the minimum height permitting administrative approval in Limited Commercial, and that is why the request for a Conditional Use has been submitted. There are existing trees to the east and west of this. There is vacant commercial property and a residential property across Amidon. There is commercial and residential to the south. There is a pretty solid screen between the property and the residential properties to the south. A little less screening, but still some screening to the properties to the west.

The issues involving the school district still apply. There is a school tower at Pleasant Valley Middle School. The Planning staff has requested this request for denial, again based on the availability of towers. We think that there should be additional screening to block out the view in certain directions. We are also recommending that the tower be approved at a lower height. The District Advisory Board heard this and recommended approval of a 170-foot high tower rather than a 190-foot tower. That was the compromise offered by the applicant, and I think they are okay with that. I will let them speak to that. We are also recommending some additional landscaping, moving the tower in the compound further away from the single-family residence, and then also accessing the compound from the arterial street rather than from the unpaved residential street. With that, I will close and stand for questions."

MARNELL "On the site plan that is attached here, it says K-96 Highway. That is not K-96 on there, is it?"

KNEBEL "It is Womer at that point. I think at one time that was K-96."

MARNELL "Yeah. A couple of questions. I have been out looking at this. It seems like that dead-end street would be the proper place to access this as opposed to bringing access out onto an arterial."

KNEBEL "Well, there is already existing access points to the arterial street. We are not suggesting that an additional one be added."

MARNELL "Where is that?"

KNEBEL "Down south. If you will look at where Womer and Amidon split, there are a couple of access drives at that point."

MARNELL "But you would then require a drive to be constructed up to wherever that is as opposed to where that site is right adjacent to it."

KNEBEL "Yes, it would require that. Correct."

MARNELL "The second comment I would have, just where that location is is tucked back up in that corner. If you put it out on Womer, which I think everybody thinks is Amidon, that puts it out in much more view to the public because that is a clearing out there. It would seem like the better location would, in fact, be this one."

KNEBEL "I am not disagreeing with the location, though."

MARNELL "I thought you said to move it northeast."

KNEBEL "Well, move the tower within that compound, yes."

MARNELL "Oh, within the small compound, not the big parcel. I'm sorry, I misinterpreted what you said."

CARRAHER "Are there any other questions of staff?"

HENTZEN "Is there any real reason to dump it onto an arterial street? I drove up there yesterday and looked."

KNEBEL "The two things that I was thinking about when I made that recommendation were this: One, if you have your access point onto Charles, you are going to have to take down the trees for that gate, so you are going to lose some of your screening, probably for a 30 or 40 foot cap. The second one is that while this is being constructed, you are going to have commercial vehicles going up and down this street, which is unpaved, and then in addition to that, on a monthly basis, or every few weeks, you are going to have commercial vehicles coming in and out of there, and then in the future, it is going to be a tall tower, so there are going to be additional antennas added. Every time they are, more commercial vehicles are going to come up and down this dirt residential street. The Comprehensive Plan is quite clear that commercial traffic shouldn't be placed on residential streets."

CARRAHER "Are there any other questions for staff? Thank you, Mr. Knebel. Would the applicant like to speak to this item?"

GREG FERRIS "Mr. Chair, members of the Planning Commission, my comments again will be very brief. We have dropped one tower and found a co-location, believe it or not, communication companies don't go out of their way to build towers. So we have found a site that is a little bit closer to this one and where we previously thought a location, so we are able to lower the height of this tower to 170 feet and still achieve what we believe is adequate coverage. I concur with the D.A.B. board on that, and we are very willing to comply with that."

I raised the issue at the D.A.B. board about the moving of that tower. I personally don't care, from the standpoint of the company; however, from a standpoint of a resident of Wichita and a citizen who had spent a little time living here and serving this community, I think back in the trees is a better location, as Mr. Marnell said. However, whatever is the will of the Planning Commission, we certainly have no problem with as a condition."

Finally, as far as access, we would prefer access off of Charles for the maintenance of this facility. This would constitute a pick-up truck two to three times a month going down this road. As a compromise, we would be willing to limit access for construction only off of the existing curb cut at Womer and would like to have access off of the drive to the residential street. However, again, if the Planning Commission feels that that is an important issue to you, we will comply and not argue with that as a condition of this. We just feel that it is a more appropriate way to access this property."

Again, I know how late it is. I could spend a lot of time talking about the need and those things, but would be glad to answer any questions that you might have."

CARRAHER "Are there any questions of applicant? Thank you, Mr. Ferris. Now we will open it up to the gallery. Is there anyone in the gallery who is wishing to speak in favor of this item? Seeing none, is there anyone in the gallery who is wishing to speak in opposition to this item? We will bring it back to the Commission. What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is commercial to the east with residential to the south and west and the Big Ditch to the north. Residential properties zoned "SF-6" are located within the compatibility height standard setback distance. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" Limited Commercial, and could be developed with other commercial uses permitted by the zoning district. Wireless communication facilities in excess of 85 feet in height in the "LC" district may be permitted as a Conditional Use, but typically should conform to the guidelines of the Wireless Communication Master Plan. Extent to which removal of the restrictions will detrimentally affect nearby property: Existing landscaping on the site would only partially obscure the view of the proposed tower, which would lead to a negative visual impact from the tower on nearby residential properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area,

especially when interim solutions such as "cellular on wheels" are available. Second, no additional landscaping is proposed to further obscure the tower from view from the adjacent residential property to the west and the residential area located east of Amidon. Finally, the proposed 190-high facility does not conform to the compatibility height standard since it is proposed to be setback only 100 feet from property zoned "SF-6" located west of the site. Impact of the proposed development on community facilities: Access to the site is proposed to be from Charles, an unpaved residential street, which would lead to an increase in commercial traffic on a residential street.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
2. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
3. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
4. The monopole shall not exceed 170 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
5. The monopole shall be located in the northeastern corner of the compound and shall be setback at least 130 feet from property zoned "SF-6" located to the west.
6. Access to the compound for the purpose of constructing the monopole shall be from the commercial property to the east utilizing an existing opening on Amidon.
7. Existing trees as indicated on the site plan submitted with the application shall be maintained and supplemented by additional landscaping planted and maintained according to a landscape plan approved by the Planning Director. The landscape plan shall provide shade trees (including existing trees) at least every 30 feet along the Womer/Amidon frontage north of the existing parking lot. The landscape plan shall provide shade trees at least every 30 feet along the west property line in the gap between the existing hedgerows. The landscape plan shall provide for densely planted evergreen trees around the north, south, and east perimeter of the compound.
8. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
9. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
10. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
11. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
12. Any violation of the conditions of approval shall render the Conditional Use null and void.

MCKAY moved, **HENTZEN** seconded the motion.

CARRAHER "Are there any questions or commentary over the motion on the floor?"

OSBORNE-HOWES "I am going to be voting against this for the same reason that I stated before. I am assuming that we are going to continue to have more of these and I don't perceive that I am going to always be voting against them because of this. I feel like the school district has a four-week window from which they can answer some of the questions that I have. But I certainly will be voting against this."

CARRAHER "Any other commentary regarding the motion? Seeing none, we will move into a voice vote."

VOTE ON THE MOTION: The motion carried with 10 votes in favor.
Osborne-Howes opposed. Platt abstained.

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14. **CON2000-00045** - City of Wichita c/o Chris Cherches (Owner); Horizon Telecommunications, Inc. and Cricket Communications, Inc. (Applicants); Ferris Consulting c/o Greg Ferris (Agent) request a Conditional use for a 140-foot high communication tower on property described as:

That part of the NW 1/4 of Sec. 14, Twp. 27-S, R-1-E of the 6th P.M., Sedgwick County, Kansas and being a portion of Lot 5, Block 1 and Reserve A of the vacated portion of Frisco Heights 2nd Addition to Wichita, Kansas, Sedgwick County, Kansas, described as commencing at a point on the south line of said NW 1/4, 541.4 west of the S.E. Corner of said NW 1/4 and being a point on the center line of Dickens Street now Roosevelt Avenue as platted in said Frisco Heights 2nd Addition; thence north, parallel with the east line of said NW 1/4, 670 feet; thence east, at right angles, 140 feet for a place of beginning; thence north at right angles, 60 feet; thence east, at right angles, 60 feet; thence south, at right angles 60 feet; thence west, at right angles, 60 feet to the place of beginning. Generally located south of 13th Street North on the east side of Roosevelt (MacDonald Golf Course).

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The owner is seeking a Conditional Use to permit the construction of a 140-foot high monopole tower (see attached elevation rendering) by Horizon Telecommunications, Inc. for use by Cricket Communications, Inc. The proposed site is zoned "TF-3" Two-Family Residential. The Unified Zoning Code requires a Conditional Use for Wireless Communication Facilities over 65 feet in height in the "TF-3" Two-Family Residential zoning district.

The proposed tower would be sited on a 3,600 square foot area located east of Roosevelt and north of 9th Street North inside the maintenance yard for MacDonald Golf Course. The site plan (attached) depicts a 60-foot by 60-foot compound with the tower located in the center of the compound and the ground-level communication equipment located in the northern portion of the compound (see attached renderings of ground-level equipment). The site plan depicts an 8-foot high chain link fence with barbed wire around the entire compound. The site plan indicates that an existing 10-foot high wood fence along Roosevelt would remain as screening of the ground-level equipment. The site plan also shows that the tower would be partially obscured from view by existing trees to the north, the maintenance building to the south, and the golf course to the east. The site plan shows that access would be provided to the site through an access easement to Roosevelt, a paved local street.

The character of the surrounding area is a mixture of residential and recreational uses with single-family residences located to the south and west and golf course and open space located to the north and west. The properties surrounding the site in all directions are zoned "TF-3" Multi-Family Residential.

The application indicates that the proposed tower is needed for part of a planned initial build-out of a wireless phone system by Cricket Communications, Inc. (see attached RF engineering evaluation). The justification for the request (attached) indicates that space was unavailable on the roof of tall buildings at Central and Hillside.

The application also indicates that an existing self-support lattice tower at Alcott School to the northeast had not been made available to be rebuilt as of the date of application. While correspondence with school district staff (see attached) indicates that the school district is in the process of making their towers available for reconstruction, it is unlikely that this school site will be made available due to the limited size (2 acres) of the school yard.

CASE HISTORY: The site is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	"TF-3"	Undeveloped park land
SOUTH:	"TF3"	Single-family residences
EAST:	"TF-3"	MacDonald Golf Course
WEST:	"TF-3"	Single-family residences

PUBLIC SERVICES: No municipally-supplied utility services are required. Access to the site is proposed from Roosevelt, a paved local street.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

RECOMMENDATION: While the proposed wireless communication facility does not take advantage of existing tall buildings or towers in the area, planning staff finds that the construction of a new tower in the area is necessary. Planning staff verified that the roof at Wesley Medical Center was unavailable for a past tower request, and the school yard at Alcott School is too small to provide space for a tower and have sufficient space remaining for parking and necessary open space. The proposed wireless communication facility complies with the setback requirement of the compatibility height standard. Planning staff also finds that with the recommended conditions of approval, the proposed wireless communication facility can conform to the guidelines of the Wireless Communication Master Plan. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be **APPROVED** subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.

- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 140 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- E. The existing trees located north of the compound and the existing fence located west of the compound as indicated on the site plan submitted with the application shall be maintained and supplemented by additional screening planted and maintained according to a landscape plan approved by the Planning Director. The landscape plan shall provide shade trees at least every 30 feet along the west property line from the chain link fence on the north to the access opening to Roosevelt on the south.
- F. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- G. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
- H. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- I. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The character of the surrounding area is a mixture of residential and recreational uses with single-family residences located to the south and west and golf course and open space located to the north and west. The properties surrounding the site in all directions are zoned "TF-3" Multi-Family Residential. The proposed wireless communication facility complies with the compatibility height standard.
- 2. The suitability of the subject property for the uses to which it has been restricted: The proposed site is zoned "TF-3" Two-Family Residential and is developed as a golf course maintenance yard. Wireless communication facilities in excess of 65 feet in height in the "TF-3" district may be permitted as a Conditional Use, but typically should conform to the guidelines of the Wireless Communication Master Plan.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Existing landscaping and screening on the site when supplemented by the landscaping recommended by the conditions of approval should obscure the view of the proposed tower from nearby residential properties and limit the negative visual impact from the tower.
- 4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: With the recommended conditions of approval, the proposed wireless communication facility conforms to the guidelines of the Wireless Communication Facility. The use of existing buildings and towers in the area have been explored and have proven not to be feasible. The proposed facility would be located on city property and would be designed in a manner to minimize height, mass, and silhouette; use colors and textures that blend with the sky; be placed so that the tower is obscured from view; and be screened through landscaping and fencing.
- 5. Impact of the proposed development on community facilities: Access to the site is proposed to be from Roosevelt, a paved local street with higher than normal levels of traffic due to the golf course, so no negative impacts on community facilities are anticipated.

KNEBEL "This is a request for a tower at MacDonald Golf Course. It is near a school which staff feels has too small of a land area to support a commercial tower. We would have otherwise recommended against it. We are recommending this one for approval, subject to the conditions found in the staff report.

This is in a pretty wide-open area with the exception of residential to the west. It is in the maintenance yard of the golf course. To the west there is some screening. We are recommending additional screening along there. With that I will stop and answer any questions."

CARRAHER "Are there any questions for staff regarding this item?"

OSBORNE-HOWES "How did you determine that Alcott School was too small?"

KNEBEL "It is about 3 times smaller than any of the smallest school sites that the others were proposed to be located on and as much as 6 to 7 times smaller than some of the others. It is only about 2 acres. It has residential properties all around it and it really doesn't have an open field area like any of the other schools."

OSBORNE-HOWES "Did you talk to the school district about this?"

KNEBEL "No, we didn't. It was just a decision based on whether it would be appropriate to place a 140 or 150-foot commercial monopole in that particular location."

CARRAHER "Are there any further questions for staff in regards to the item? Thank you, Mr. Knebel. Would the applicant care to address the item at this time?"

GREG FERRIS "Thank you, Mr. Chair, members of Planning Commission. We concur with the findings of staff and their recommendations and their conditions. We would be glad to answer any questions."

CARRAHER "Are there any questions for the applicant with regards to this item?"

HENTZEN "The application was for a 140-foot. I believe staff recommended 125 foot. Is that all right?"

FERRIS "No, on this one, I believe it is a 140-foot recommendation. I may be wrong. We do need 140 foot."

HENTZEN "Let me read from the blue sheet. 'The agent, Greg Ferris, explained that the owner is seeking a Conditional Use to omit the construction of a 125-foot high monopole tower.'"

FERRIS "Is that for this site or is that for the little site?"

KNEBEL "That is an error."

MILLER "That is the D.A.B. report."

HENTZEN "That is an error? So the application is correct. Okay."

CARRAHER "Are there any other questions for the applicant?"

FERRIS "Thank you very much."

CARRAHER "Thank you, Mr. Ferris. We will open up to the gallery. Is there anyone in the gallery here to speak in favor of this item? Is there anyone in the gallery here to speak in opposition to this item? Seeing none, we will move it back to the Commission. What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is a mixture of residential and recreational uses with single-family residences located to the south and west and golf course and open space located to the north and west. The properties surrounding the site in all directions are zoned "TF-3" Multi-Family Residential. The proposed wireless communication facility complies with the compatibility height standard. The suitability of the subject property for the uses to which it has been restricted: The proposed site is zoned "TF-3" Two-Family Residential and is developed as a golf course maintenance yard. Wireless communication facilities in excess of 65 feet in height in the "TF-3" district may be permitted as a Conditional Use, but typically should conform to the guidelines of the Wireless Communication Master Plan. Extent to which removal of the restrictions will detrimentally affect nearby property: Existing landscaping and screening on the site when supplemented by the landscaping recommended by the conditions of approval should obscure the view of the proposed tower from nearby residential properties and limit the negative visual impact from the tower. Conformance of the requested change to the adopted or recognized Comprehensive Plan: With the recommended conditions of approval, the proposed wireless communication facility conforms to the guidelines of the Wireless Communication Facility. The use of existing buildings and towers in the area have been explored and have proven not to be feasible. The proposed facility would be located on city property and would be designed in a manner to minimize height, mass, and silhouette; use colors and textures that blend with the sky; be placed so that the tower is obscured from view; and be screened through landscaping and fencing. Impact of the proposed development on community facilities: Access to the site is proposed to be from Roosevelt, a paved local street with higher than normal levels of traffic due to the golf course, so no negative impacts on community facilities are anticipated.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
2. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
3. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.

4. The monopole shall not exceed 140 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
5. The existing trees located north of the compound and the existing fence located west of the compound as indicated on the site plan submitted with the application shall be maintained and supplemented by additional screening planted and maintained according to a landscape plan approved by the Planning Director. The landscape plan shall provide shade trees at least every 30 feet along the west property line from the chain link fence on the north to the access opening to Roosevelt on the south.
6. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
7. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
8. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
9. Any violation of the conditions of approval shall render the Conditional Use null and void.

MICHAELIS moved, **GAROFALO** seconded the motion.

CARRAHER "Are there any questions or commentary in regards to the motion?"

VOTE ON THE MOTION: The motion carried unanimously with 11 votes.
Platt abstained.

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15. **Case No. CUP2000-00040: DP-3 Amendment #2** - TMP Twin Lakes, LLC c/o Dan Baker (Owner); Brad Murray Rentals, LLC and ITSROE.com, Inc.; (Applicants); Austin Miller, PA c/o Kim Edgington (Agent) request an amendment to the Twin Lakes Community Unit Plan for a 130-foot high communication tower on property described as:

Lot 2, Block A, Lakeview Estates 2nd Addition, Wichita, Kansas, Sedgwick County, Kansas. Generally located on the southeast corner of 21st Street North and Amidon.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The owner is seeking an amendment to the Twin Lakes Shopping Center CUP (DP-3) to permit the construction of a 130-foot high monopole tower (see attached "Site Elevation" and "Stamped Permit Drawings") by Brad Murray Rentals, LLC for use by ITSROE.com, Inc. The proposed site is zoned "GC" General Commercial. The Unified Zoning Code permits Wireless Communication Facilities up to 150 feet in height in the "GC" General Commercial zoning district with an Administrative Permit; however, the application for a CUP amendment was filed based upon planning staff's non-support of the request due to its lack of conformance with the Wireless Communication Master Plan.

The proposed tower would be sited on a 2,935 square foot area located near the southwest corner of 20th Street North and Woodrow, in the rear parking lot of the Twin Lakes Shopping Center (see attached "Site Exhibit"). The proposed tower would be located in a triangular-shaped compound (see attached "Compound Detail") with the tower and associated antennas (see attached "Antennas & Accessories") located near the center of the compound and the ground-level communication equipment located in the east corner of the compound. The compound would be screened by an 8-foot high cedar fence. Access to the compound would be provided from the shopping center parking lot through a gate on the west side of compound. The proposed wireless communication facility would be partially obscured from view from nearby properties by existing trees to the south and east and existing buildings to the north and west.

The character of the surrounding area is commercial to the north and west and residential to the south and east. The property north and west of the site is zoned "LC" Limited Commercial and is developed with the Twin Lakes Shopping Center. The property south and east of the site is zoned "B" Multi-Family Residential and "SF-6" Single-Family Residential and is developed with the Twin Lakes Apartments, a recreational lake, and single-family residences in the Cornelison Addition.

The application indicates that the proposed tower is needed for ITSROE.com, Inc. to provide wireless broadband services (see attached letters and diagrams) to the area around Twin Lakes. The application indicates that several avenues (such as locating on existing towers and tall buildings in the area) other than the construction of a new tower have been pursued and were not feasible for economical and/or technical reasons. However, these economical and technical reasons are not substantiated with cost comparisons of the proposed tower to other options or site specific radio frequency analyses of alternative locations.

The application also indicates that existing self-support lattice towers at several schools in the vicinity of the proposed tower had not been made available for use or reconstruction as of the date of application. Correspondence with school district staff (see attached e-mails) indicates that the school district is in the process of making their towers available for use or reconstruction.

Finally, the application indicates that the negotiated lease rate for co-location on the proposed tower is significantly more feasible than the cost of constructing a new tower. However, the application is not for co-location on an existing tower; rather, the application is for the construction of a new tower for the purpose of locating antennas for use by ITSROE.com. In the opinion of planning staff, the statement implies that the tower is proposed for construction for a purpose other than locating antennas for ITSROE.com without providing information regarding the intended use of the tower in order that the need for this intended use and its impact on surrounding properties can be adequately evaluated.

CASE HISTORY: The subject property is platted as part of the Lakeview Estates 2nd Addition, which was recorded on February 13, 1964. The subject property is also within the Twin Lakes Shopping Center CUP (DP-3), which as approved on November 18, 1969. The zoning of the subject property was changed from "LC" Light Commercial to "C" Commercial and the CUP was amended on October 19, 1993 to permit outdoor display and storage.

ADJACENT ZONING AND LAND USE:

NORTH: "LC"	Twin Lakes Shopping Center
SOUTH: "SF-6" & "B"	Twin Lakes Apartments & recreational lake
EAST: "SF-6" & "B"	Twin Lakes Apartments & single-family residences
WEST: "LC"	Twin Lakes Shopping Center

PUBLIC SERVICES: No municipally-supplied utility services are required. Access to the site will be from private property with no additional access to public streets required.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a CUP Amendment or a Zoning Adjustment.

RECOMMENDATION: Planning staff finds that the proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for use or reconstruction, and the application does not substantiate with site specific radio frequency analyses the inability to use existing or reconstructed school towers in the vicinity of the subject property. Second, the proposed monopole tower does not minimize the mass, proportion, and silhouette of the facility. The proposed monopole tower would be significantly more visually intrusive than a lightweight lattice tower measuring 18 inches on a side. During negotiations with the wireless industry regarding the Wireless Communication Master Plan, representatives of the broadband wireless industry (including ITSROE.com) stated that lightweight lattice towers needed to be permitted by right because they could not afford to construct or lease space on monopole towers or go through the expensive Conditional Use or CUP amendment process. A lightweight lattice tower for the intended use on the subject property could be approved by Administrative Permit and would be significantly less intrusive visually than the proposed monopole tower. Finally, the proposed 130 foot-high facility does not conform to the compatibility height standard since it is proposed to be setback only 80 feet from property zoned "SF-6" located south of the site. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be **DENIED**; however, if the MAPC finds the request appropriate, planning staff recommends that the MAPC make appropriate findings and that approval be subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 130 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
- E. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 20 feet and future loading expansions to accommodate communication equipment for at least four wireless service providers.
- F. The compound shall be enclosed by an 8-foot high solid screening fence.
- G. The existing trees located south and east of the compound as indicated on the site plan submitted with the application shall be maintained to obscure the wireless communication facility from view from nearby properties.

- H. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- I. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
- J. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- K. The 2,935 square foot, triangular-shaped compound for the monopole shall be designated on the CUP plan, and the uses allowed for Parcel 1 shall be modified to add: "Wireless communication facility only in designated area."
- L. The following shall be added to the CUP General Provisions: "The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development."
- M. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this amendment by the MAPC or Governing Body, as applicable, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The character of the surrounding area is commercial to the north and west and residential to the south and east. The property north and west of the site is zoned "LC" Limited Commercial and is developed with the Twin Lakes Shopping Center. The property south and east of the site is zoned "B" Multi-Family Residential and "SF-6" Single-Family Residential and is developed with the Twin Lakes Apartments, a recreational lake, and single-family residences in the Cornelison Addition. Property zoned "SF-6" Single-Family Residential is located within the compatibility height standard setback distance.
- 2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "GC" General Commercial, and has been developed as a parking lot for a shopping center. The site also could be used for outdoor display and storage per a recently approved amendment of the CUP. Wireless communication facilities up to 150 feet in height in the "GC" district may be permitted with an Administrative Permit, but must conform to the guidelines of the Wireless Communication Master Plan. A CUP amendment may be granted to permit a wireless communication facility in the "GC" district that does not conform to the guidelines of the Wireless Communication Plan; however, the facility should conform to the guidelines as much as possible.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed monopole tower does not minimize the mass, proportion, and silhouette of the facility and would have a negative visual impact on nearby residential properties.
- 4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and the application does not substantiate with site specific radio frequency analyses the inability to use existing or reconstructed school towers in the vicinity of the subject property. Second, the proposed monopole tower does not minimize the mass, proportion, and silhouette of the facility. The proposed monopole tower would be significantly more visually intrusive than a lightweight lattice tower measuring 18 inches on a side. During negotiations with the wireless industry regarding the Wireless Communication Master Plan, representatives of the broadband wireless industry (including ITSROE.com) stated that lightweight lattice towers needed to be permitted by right because they could not afford to construct or lease space on monopole towers or go through the expensive Conditional Use or CUP amendment process. A lightweight lattice tower for the intended use on the subject property could be approved by Administrative Permit and would be significantly less intrusive visually than the proposed monopole tower. Finally, the proposed 130-high facility does not conform to the compatibility height standard since it is proposed to be setback only 80 feet from property zoned "SF-6" located south of the site.
- 5. Impact of the proposed development on community facilities: Access to the site will be from private property with no additional access to public streets required, so no negative impacts on community facilities are anticipated.

KNEBEL "This is a request for a Community Unit Plan Amendment to construct a 130-foot high monopole tower. The initial user, based on the application was different than the one that we have been talking about in the past four cases. The user for which the application was submitted is a company called ITSROE, which is a broadband wireless data transfer company. Since the time the application was submitted, the agent for the applicant has indicated that Cricket Communication is also interested in co-locating on this particular site that was mentioned by Mr. Ferris a couple of cases ago when he mentioned that they had re-located a site. This is the tower that he was referring to.

Again, as with other towers, the Planning staff has found that there are existing towers in the area that weren't utilized. We had made some comments regarding not minimizing the mass and proportion of the facility; however, if it is going to be a facility that needs to support PCS antennas, then obviously it will need to be a monopole as proposed. We also mentioned that the monopole is located 130 feet from property zoned 'SF-6'. That property is not developed with

residential uses, it is developed with a recreational lake for the apartments located to the east and to the south. There are single-family residences to the east, and located to the north and to the west is the Twin Lakes commercial area.

We have recommended it for denial. If the Planning Commission wants to approve this case, we have some conditions here that we think it should be approved under. We think that it should be approved at 130 feet, capable to extending it to 150 feet. Perhaps the applicant will ask for something different than that, I don't know. We also request that the existing trees be maintained as a buffer to the residential properties. There is a pretty good row of screening trees along the border of the shopping center. With that, I will close my comments."

CARRAHER "Are there any questions of staff regarding this item?"

OSBORNE-HOWES "You also talked about the schools. What school were you thinking about?"

KNEBEL "Well, actually, there are several schools in the vicinity of this. I didn't mention them all. There are schools to the northwest, to the northeast, to the southwest, to the southeast."

OSBORNE-HOWES "I am trying to think of schools close by this?"

KNEBEL "The closest one is located back behind the Sutherlands on the northwest corner of 21st and Amidon about 2 blocks from that corner."

CARRAHER "Are there any further questions for staff regarding this item? Okay. Would the applicant like to address this item at this time?"

KIM EDGINGTON "I am with Austin Miller, here for the applicant. I will be very brief. It seems that one of staff's main objections to this application is the fact that ITSROE does not require a monopole for their equipment; however, you can see through the materials that we submitted that there is another carrier that we now have an agreement with to locate on this site.

We did want to mention also that this went to the District Advisory Board on Monday and was voted unanimously for approval. I would be happy to answer any questions that you might have."

CARRAHER "Are there any questions for the applicant regarding this item? We will move to the gallery. Is there anyone in the gallery wishing to speak in favor of this item?"

GREG FERRIS "Members of the Planning Commission, in this case I represent only Cricket Communications. Cricket Communications is a wireless provider which you are very familiar with by now. They have now sought to locate on this antenna. As a result of that, my other client, Horizon, has dropped a tower that they were planning to build for Cricket, so this really results in a net loss to the community of one tower. I know that breaks your heart, but we have no problem doing that. So we support this application and need this application for continuous coverage in this area. I would be glad to answer any questions that you might have."

CARRAHER "Are there any questions for the speaker regarding this item? Thank you, Mr. Ferris. Is there anyone else in the gallery who wishes to speak in opposition to this item?"

RICHARD HESS "I live at 1643 Woodrow Court. I am the Editor of the North Riverside News and a board member of the North Riverside Neighborhood Association. We have been in opposition to this, not because of the fact that it is a tower, but that its location is squarely located in the direct view of the people living in the Twin Lakes apartments. There was originally going to be another board member here to speak, but he is a new father and was apparently unable to come.

Our objection is that if there were the worst place for the people in Twin Lakes to put this tower, this would be it. I can understand why it is here, it is the highest point on Twin Lakes property. But if it were located near the office park, in the parking lot, north anywhere, it would not be such a burden on the view to the people living in those apartments. Looking at the illustration, I see that the illustration was drawn conveniently to show the cottonwood tree as quite an effective barrier, but from most views, the cottonwood tree would be like trying to hide a yardstick with a Dixie cup. I have no further comments."

CARRAHER "Are there any questions for the speaker? Is there anybody else in the gallery who is wishing to speak in opposition to this item? Seeing none, would the applicant like to exercise their two minute rebuttal?"

EDGINGTON "We would just like to point out that the District Advisory Board, at their meeting in looking at this, determined this to be their most favorable location within the complex for this tower. The average distance is around 800 feet from the nearest apartments. As you can see from the aerial photo, there is a significant stand of mature trees along the edge of that lake and on the border of that shopping center that screens that view very well. Again, this is in General Commercial, which the Wireless Plan allows towers up to 150 feet in as long as they meet the siting guidelines. The only one that we don't is the setback requirement and that setback again, as Scott pointed out is from what is developed as a lake. That is really all I have to say."

WARREN "Are you in agreement with staff comments?"

EDGINGTON "Yes, we are."

OSBORNE-HOWES "I don't see the write-up on the D.A.B. meeting. Did we get one?"

WARREN "Yes. It is Item No. 15."

OSBORNE-HOWES "The reason I am asking that is--was there a staff member there? Do you go with her comments that they chose this for the very best site for the Twin Lakes shopping center?"

KNEBEL "I think she was referring to the property owner."

EDGINGTON "The D.A.B. voted to approve it located at this site. The location was dictated in part by agreement between the client and the landlord for this property."

OSBORNE-HOWES "But you said that the D.A.B. said that this was the very best site within the shopping center."

EDGINGTON "I'm sorry, I misspoke. The D.A.B. agreed to this location within the shopping center."

OSBORNE-HOWES "Did you mean with the Twin Lake Apartment dwellers?"

EDGINGTON "I apologize. I was at a different D.A.B. meeting that night."

OSBORNE-HOWES "Well, at any time did either of you meet with the Twin Lakes apartment dwellers?"

EDGINGTON "I have not met with anyone from the Twin Lakes apartments."

OSBORNE-HOWES "Tim, have you?"

TIM AUSTIN "No, I haven't. But to address your question about what the D.A.B. board found was that we addressed the issue of the four quadrants of the intersection as well as within the shopping center, and the conclusion of the D.A.B. board was in looking at the four corners of the intersection, not only within the shopping center, that this was the best site available."

CARRAHER "Are there any further questions for the applicant regarding this item? Seeing none, we will move back to the Commission. What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is commercial to the north and west and residential to the south and east. The property north and west of the site is zoned "LC" Limited Commercial and is developed with the Twin Lakes Shopping Center. The property south and east of the site is zoned "B" Multi-Family Residential and "SF-6" Single-Family Residential and is developed with the Twin Lakes Apartments, a recreational lake, and single-family residences in the Cornelison Addition. Property zoned "SF-6" Single-Family Residential is located within the compatibility height standard setback distance. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "GC" General Commercial, and has been developed as a parking lot for a shopping center. The site also could be used for outdoor display and storage per a recently approved amendment of the CUP. Wireless communication facilities up to 150 feet in height in the "GC" district may be permitted with an Administrative Permit, but must conform to the guidelines of the Wireless Communication Master Plan. A CUP amendment may be granted to permit a wireless communication facility in the "GC" district that does not conform to the guidelines of the Wireless Communication Plan; however, the facility should conform to the guidelines as much as possible. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed monopole tower does not minimize the mass, proportion, and silhouette of the facility and would have a negative visual impact on nearby residential properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and the application does not substantiate with site specific radio frequency analyses the inability to use existing or reconstructed school towers in the vicinity of the subject property. Second, the proposed monopole tower does not minimize the mass, proportion, and silhouette of the facility. The proposed monopole tower would be significantly more visually intrusive than a lightweight lattice tower measuring 18 inches on a side. During negotiations with the

wireless industry regarding the Wireless Communication Master Plan, representatives of the broadband wireless industry (including ITSROE.com) stated that lightweight lattice towers needed to be permitted by right because they could not afford to construct or lease space on monopole towers or go through the expensive Conditional Use or CUP amendment process. A lightweight lattice tower for the intended use on the subject property could be approved by Administrative Permit and would be significantly less intrusive visually than the proposed monopole tower. Finally, the proposed 130-high facility does not conform to the compatibility height standard since it is proposed to be setback only 80 feet from property zoned "SF-6" located south of the site. Impact of the proposed development on community facilities: Access to the site will be from private property with no additional access to public streets required, so no negative impacts on community facilities are anticipated.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
2. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
3. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
4. The monopole shall not exceed 130 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
5. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 20 feet and future loading expansions to accommodate communication equipment for at least four wireless service providers.
6. The compound shall be enclosed by an 8-foot high solid screening fence.
7. The existing trees located south and east of the compound as indicated on the site plan submitted with the application shall be maintained to obscure the wireless communication facility from view from nearby properties.
8. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
9. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
10. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
11. The 2,935 square foot, triangular-shaped compound for the monopole shall be designated on the CUP plan, and the uses allowed for Parcel 1 shall be modified to add: "Wireless communication facility only in designated area."
12. The following shall be added to the CUP General Provisions: "The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development."
13. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this amendment by the MAPC or Governing Body, as applicable, or the request shall be considered denied and closed.

WARREN moved, **HENTZEN** seconded the motion.

CARRAHER "Are there any questions or comments regarding the motion on the floor?"

OSBORNE-HOWES "In addition to my usual issue about the school, although I think the school may be a little far from this one, I guess I will have to say that to not have spoken to the Twin Lakes apartment dwellers and it is right in front of them that those trees are not barriers 12 months of the year, and I am real familiar with that location, I just think that is a shame."

HENTZEN "I am very familiar with that location, too, and the tower does not interfere with the site over the lake. That is where the ducks and the geese come in. It is north of the lake and does not obstruct the view of those apartment dwellers."

CARRAHER "Are there any further questions or comments in regard to the motion? We will move into a voice vote."

VOTE ON THE MOTION: The motion carried with 10 votes in favor.
Osborne-Howes opposed. Platt abstained.

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16. **Case No. CUP2000-00046; DP-37 Amendment #3** - Daniel M. Carney (Owner); Benchmark Holdings, LLC c/o Philip A. Bundy (Contract Purchaser); Brad Murray Rentals, LLC and ITSROE.com, Inc. (Applicants); Austin

Miller, PA c/o Kim Edgington (Agent) request an amendment to the Ridge Plaza Community Unit Plan to add 150-foot wireless communication facility as an allowed use on Parcel 28 on property described as:

Lot 17, Block 1, Ridge Plaza 4th Addition to Wichita, Sedgwick County, Kansas. Generally located south of University and west of Holland.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The owner is seeking an amendment to the Ridge Plaza CUP (DP-37) to permit the construction of a 150-foot high self-support lattice tower (see attached "Site Elevation" and "Tower Configuration") by Brad Murray Rentals, LLC for use by ITSROE.com, Inc. . The proposed site is zoned "LC" Limited Commercial. The Unified Zoning Code requires a Conditional Use for Wireless Communication Facilities over 85 feet in height in the "LC" Limited Commercial zoning district. Conditional uses for properties located within a CUP are considered by a request to amend the CUP.

The proposed tower would be sited on a 4,225 square foot area located near the southwest corner of University and Holland on a vacant commercial lot (see attached "Site Exhibit"). The proposed tower would be located in a 65-foot by 65-foot compound with the tower and associated antennas (see attached "Antennas & Accessories") located near the center of the compound. The site plan does not indicate the location of the ground-level communication equipment within the compound. The compound would be screened by an 8-foot high wood or composite fence. Access to the compound would be provided through an access easement from University, a local commercial/industrial street. The proposed wireless communication facility would be obscured from view from nearby residentially zoned properties by existing trees to north and west.

The character of the surrounding area is commercial to the south and east, institutional to the north, and residential to the west. The property south and east of the site is zoned "LC" Limited Commercial and is primarily vacant commercial lots with a commercial building located immediately east of the subject property. The property north of the site is zoned "SF-6" Single-Family Residential and is developed with Benton School. The property west of the site is zoned "TF-3" Two-Family Residential and is developed with duplexes.

The subject property is located in the vicinity of Mid-Continent Airport; therefore, planning staff contacted airport staff to receive their input on the proposed tower. Airport staff indicated that the top of the tower should have a red flashing aircraft warning light. Airport staff also indicated that the tower should receive approval from the FAA (see attached "Aeronautical Study").

The application indicates that the proposed tower is needed for ITSROE.com, Inc. to provide wireless broadband services (see attached letter) to the area around Ridge Plaza. The application indicates that avenues (such as locating on existing towers in the area) other than the construction of a new tower have been pursued and were not feasible for economical and/or technical reasons. However, these economical and technical reasons are not substantiated with cost comparisons of the proposed tower to other options or a radio frequency analysis of alternative locations.

The application also indicates that an existing self-support lattice tower at Benton School had not been made available for use or reconstruction as of the date of application. Correspondence with school district staff (see attached e-mails) indicates that the school district is in the process of making their towers available for use or reconstruction.

Finally, the application indicates that the negotiated lease rate for co-location on the proposed tower is significantly more feasible than the cost of constructing a new tower. However, the application is not for co-location on an existing tower; rather, the application is for the construction of a new tower for the purpose of locating antennas for use by ITSROE.com. In the opinion of planning staff, the statement implies that the tower is proposed for construction for a purpose other than locating antennas for ITSROE.com without providing information regarding the intended use of the tower in order that the need for this intended use and its impact on surrounding properties can be adequately evaluated.

CASE HISTORY: The subject property is platted as part of the Ridge Plaza 4th Addition, which was recorded on July 23, 1973. The subject property is also within the Ridge Plaza CUP (DP-37), which as approved on April 15, 1980.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-6"	Benton School
SOUTH:	"LC"	Undeveloped
EAST:	"LC"	Commercial building
WEST:	"TF-3"	Duplexes

PUBLIC SERVICES: No municipally-supplied utility services are required. Access to the site will be from University, a local commercial/industrial street.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for

personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a CUP Amendment or a Zoning Adjustment.

RECOMMENDATION: Planning staff finds that the proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for use or reconstruction, and the application does not substantiate with a radio frequency analysis the inability to use an existing or reconstructed school tower located immediately across the street from the subject property. Second, the proposed self-support lattice tower does not minimize the mass, proportion, and silhouette of the facility. The self-support lattice tower would be significantly more visually intrusive than a lightweight lattice tower measuring 18 inches on a side. During negotiations with the wireless industry regarding the Wireless Communication Master Plan, representatives of the broadband wireless industry (including ITSROE.com) stated that lightweight lattice towers needed to be permitted by right because they could not afford to construct or lease space on commercial towers or go through the expensive Conditional Use or CUP amendment process. Finally, the proposed 150-high facility does not conform to the compatibility height standard since it is proposed to be setback only 135 feet from property zoned "SF-6" located north of the site. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be **DENIED**; however, if the MAPC finds the request appropriate, planning staff recommends that the MAPC make appropriate findings and that approval be subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- E. The monopole shall be located in the southern portion of the compound and shall be setback at least 150 feet from property zoned "TF-3" or more restrictive.
- F. The monopole shall have a red flashing aircraft warning light mounted at the top.
- G. The compound shall be enclosed by an 8-foot high solid screening fence.
- H. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- I. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- J. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
- K. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- L. The 65-foot by 65-foot compound for the monopole shall be designated on the CUP plan, and the uses allowed for Parcel 28 shall be modified to add: "Wireless communication facility only in designated area."
- M. The following shall be added to the CUP General Provisions: "The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development."
- N. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this amendment by the MAPC or Governing Body, as applicable, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The character of the surrounding area is commercial to the south and east, institutional to the north, and residential to the west. The property south and east of the site is zoned "LC" Limited Commercial and is primarily vacant commercial lots with a commercial building located immediately east of the subject property. The property north of the site is zoned "SF-6" Single-Family Residential and is developed with Benton School. The property west of the site is zoned "TF-3" Two-Family Residential and is developed with duplexes. Property zoned "SF-6" Single-Family Residential is located within the compatibility height standard setback distance.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" General Commercial, and could be developed with uses permitted by the Ridge Plaza CUP. Wireless communication facilities in excess of 85 feet in height in the "LC" district may be permitted as a Conditional Use, but typically should conform to the guidelines of the Wireless Communication Master Plan.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed self-support lattice tower does not minimize the mass, proportion, and silhouette of the facility and would have a negative visual impact on nearby residential properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for use or reconstruction, and the application does not substantiate with a radio frequency analysis the inability to use an existing or reconstructed school tower located immediately across the street from the subject property. Second, the proposed self-support lattice tower does not minimize the mass, proportion, and silhouette of the facility. The self-support lattice tower would be significantly more visually intrusive than a lightweight lattice tower measuring 18 inches on a side. During negotiations with the wireless industry regarding the Wireless Communication Master Plan, representatives of the broadband wireless industry (including ITSROE.com) stated that lightweight lattice towers needed to be permitted by right because they could not afford to construct or lease space on commercial towers or go through the expensive Conditional Use or CUP amendment process. Finally, the proposed 150-high facility does not conform to the compatibility height standard since it is proposed to be setback only 135 feet from property zoned "SF-6" located north of the site.
5. Impact of the proposed development on community facilities: Access to the site will be from University, a local commercial/industrial street, so no negative impacts on community facilities are anticipated.

KNEBEL "This is a request for the construction of a 150-foot high self-support lattice tower. It is a little different from the requests that we have been discussing so far. (Indicating) This is the design of a self-support lattice tower, which you can see is different than the design of a monopole. It does not meet the design guidelines of the Wireless Master Plan, which indicates that monopoles up to 150 feet are preferred over the lattice towers.

The request is to construct a tower by Brad Murray Rentals for use by ITSROE. The broad band wireless data transfer company. The property is located in Limited Commercial--to exceed 85 feet, you would require a Conditional Use. Since it is in a Community Unit plan, you have to amend that plan.

The area is on vacant commercial property, and all of the property to the south is approved for Limited Commercial zoning. There are residential properties to the west. To the north there is a school tower relatively close--within a couple of hundred feet. This site is also located underneath the approach to Mid-Continent Airport. We do want to make sure that everybody has received a copy of the short E-mail from Bailis Bell. It should have been in your original agenda mail out separate from the packet itself. The staff report indicates that the Planning staff reviewed it and recommended that an aircraft warning light be placed on it. Since that time, they have added some further review and reviewed some information from the FAA, which they think is in error. They are here to speak to that, and have recommended that the tower be denied, based upon its impact on the airport. That is a different issue regarding this tower that did not apply to those other towers.

The other issue that is different from this tower that I think is worth going into is that this tower is proposed for use with much lighter weight antennas than what is used by Cricket Communications for their PCS phone system. At the time that the Wireless Plan was developed, the companies, including ITSROE, that utilized this technology indicated that they needed some special attention. They needed to be able to build lighter weight towers, needed to have quicker approval, so they could not afford to go through the process that they are currently going through, so we are just pointing that out because the plan does indicate that you should minimize the mass and proportion and silhouette of the facility to the extent possible.

Based on the users that are identified today, that is a good sign that you could use a tower that is similar in mass and proportion to the one in that picture there rather than the one that is proposed, which would probably have a base of at least twice that width.

The Planning staff has recommended this one for denial based on the proximity of school towers, the lack of documentation regarding the need for a new tower and the increased mass and proportion and the fact that it would have impact on the operations of Mid-Continent Airport. If, however, the Planning Commission recommends that it be approved, we have some recommended conditions of approval. One of those is that the tower be of monopole design, which is similar to those which you have just approved recently; that the tower be located further to the south, away from the residential zoning to the north; that the tower be mounted with a warning light and that it receive FAA approval. With that I will conclude my remarks. We want to have the airport people speak on this. Oh, the District Advisory Board did hear this case and they did recommend that the case be denied. They expressed concern regarding the school district's readiness and the concern about the fact that the tall structures may impede air travel."

CARRAHER "Are there questions for staff?"

JOHNSON "Do you know how tall the school tower is?"

KNEBEL "That tower is 100 feet tall."

JOHNSON "Did the airport oppose it when it was built?"

KNEBEL "That tower was granted a variance by the Board of Zoning Appeals and received an Airport Hazard zoning permit since it exceeds 75 feet in height. In reviewing the minutes, the airport staff was not consulted by the Board of Zoning Appeals on this issue, the best I can tell."

HENTZEN "That was my question, but I wanted to ask you one other thing, Scott. Is there any tower height-wise that could be built there? That one is how tall?"

KNEBEL "It is 100 feet."

HENTZEN "One hundred feet. What are the rules now at the end of the airport like that?"

KNEBEL "I would have to defer to the airport staff on that question."

HENTZEN "Okay. Is there somebody here from the airport?"

KNEBEL "Yes, there is."

JOHN OSWALD "I am the Director of the Airport Engineering and Planning. The FAA has guidelines. I don't know if it is in your packet, I notice it wasn't in mine, but the Director of Airports has recommended denial because it impacted general aviation traffic. He is out of town, so I can't answer on his behalf. I would ask that we not negotiate with me right now on this particular item on tower height, but staff is working on that particular item that you just commented on because of the general aviation impact."

MARNELL "Would you explain what you mean by that?"

OSWALD "The impact of general aviation? Part of that is going to be reading my boss' mind, which is dangerous, but it is my impression that general aviation aircraft often don't follow what I would call the imaginary highways or imaginary surfaces that aircraft are supposed to follow, and that approach surfaces into the airport, that was an issue, I think, on his behalf. He was concerned about this tower height."

Somebody commented about heights of structures in the vicinity. I am within a few feet of what I am going to say here because the ground elevations are different, but as you enter Mid-Continent Airport from the east, you are on the third level of the interchange, the wide, single lane as you swing in south to Mid-Continent. The approximate elevation of the tallest light pole is about 80 feet less than what this tower application is, plus or minus. Recognize that it is plus or minus. That is a comparison. I don't want to get into exactness here because I don't have enough information to be precise, but to give you a point of reference."

MARNELL "Doesn't the FAA have very specific regulations in terms of guide slopes away from an airport?"

OSWALD "Yes, they do."

MARNELL "So if this doesn't meet that criteria, they would not approve that?"

OSWALD "The copy of the FAA Determination of No Hazards of Air Navigation that is in your packet was for a 155 foot tower, which we feel was issued in error, and it is my understanding that the FAA will rescind that Determination of No Hazard to Air Navigation. I don't personally know if the applicant has made another application for a different tower height."

MARNELL "I guess my comment on this is that I don't think that we should be establishing patchwork of regulations city by city that the federal government is the expert in this one and they have very firm standards in place and if they won't approve one that doesn't meet those guide slopes coming out of the airport."

OSWALD "That is the theory, but we believe that one that the applicant received under the Determination of No Hazard of Air Navigation was in error, and I am not sure why they made that error."

MARNELL "But you folks protested it that they had missed it under regulations?"

OSWALD "That is my understanding, yes."

CARRAHER "Are there any further questions for staff?"

MICHAELIS "Okay, I just want to make sure that I am clear on this. This piece of paper in here that says it does not pose a problem should not have been written?"

OSWALD "That is our opinion."

CARRAHER "Are there any further questions of staff? Thank you, sir. Mr. Knebel, is there anything else you wanted to add? Okay, thank you. Would the applicant like to address the item at this time?"

KIM EDGINGTON "I am with Austin Miller, here for the applicant. I am going to touch on just a minor point with the FAA. The FAA approval has not been rescinded. It has merely been reduced to 150 feet after some careful reconsideration. I think after this matter was brought up to the FAA they have gone back and thoroughly checked this over and have asked us to agree to decreasing that height of approval to 150 feet. We have no problem with that. Tim Austin can address any more specific questions about runway approaches, and if you care to do that at this time, I will hold off the rest of my comments until he answers those questions."

TIM AUSTIN "I am with Austin Miller. Mr. Oswald was correct, the highways of the air are very well mapped. If you can imagine a cone coming off the end of the runway, both vertically and horizontally, that is what those highways look like. They are very well defined cones. I have with me, and I will submit it as evidence for record, a runway approach map as published by the FAA.

There are a couple of things that you need to know about this tower. It is 5,000 feet off the end of the west runway and it is 1,800 feet left of the center line of that runway, which means it is 1,200 feet out of what we call the approach surface at 5,000 feet. It is 1,200 feet out of that approach surface. The FAA has a published floor of 200 feet above the end of the runway, or the established runway elevation, which is 1332 mean sea level, and 200 feet above that, obviously, would be 1532 mean sea level. Our tower site, actually the ground elevation is the same as the runway, so 150 feet means we are 50 feet below the FAA safety standard.

That is why the permit was issued. The FAA found that we were below their safety standard. The City of Wichita also has an ordinance, City Ordinance 43-719, which is an airport hazard zoning ordinance. I am not sure whether that is still in effect or not. Marvin can maybe enlighten us. That ordinance also establishes a minimum height of elevation above the runway elevation. That is 150 feet, in which we are in compliance. I would be happy to answer any questions about that. We spent a lot of time researching this, talking to some pilots and really didn't find any major concerns except for emergencies, in which case if you are a pilot and you have an emergencies, you have other things to worry about."

CARRAHER "Are there any questions for the applicant?"

OSBORNE-HOWES "Have you talked to Mr. Bell about his letter?"

AUSTIN "I have not talked to Mr. Bell about that. I understand that he has been out of town. I will be seeing him Monday at the Airport Advisory Board meeting. I will talk with him at that time."

HENTZEN "I want to say something to that effect, that is, I have a confidence in Mr. Bell, is what I am trying to say, and if he is going to be available as early as Monday--I was prepared to make a motion to deny this request, but if you think that Bailis Bell is going to change his attitude or that the Feds are going to change their attitude, I need to know about it."

AUSTIN "I can't speak for Mr. Bell. I think Mr. Oswald has articulated their position. It is in the form of E-mail. They feel that that is safety hazard and they want to take a look at how towers take another look at that. I don't understand, quite frankly, why the Airport Authority wasn't involved when we went through the moratorium process and the planning process, but the simple fact is that the FAA has approved this. Kind of an analogy that I would use is that it is like the Federal Highway Administration. On all of your Interstate highways, there is a 30-foot what we call a 'clear zone' off the end of the shoulder. Anything within 30 feet has to be protected by a guardrail. If it is 30 feet or 31 feet outside, it doesn't have to be protected by a guardrail. Those standards are in place. There are statistical probabilities. I am sure there was a lot of forethought given to those when they adopted those standards.

These standards that are on this approach path are standards that every pilot has at every airport around the Nation. I have a whole thick binder of these things that were given to us by the Flight Standards District Office of the FAA out at Mid-Continent. We believe because it doesn't actually lie within the approach as Mr. Knebel indicated--it does not lie within the approach glide path as established by this document, which I will submit."

CARRAHER "Are there any further questions for the applicant? Thank you. Ms. Edgington, is there anything else you want to add?"

EDGINGTON "I would just like to address some of the other issues regarding this. I will submit, for the record, and then also for your viewing, some photos. These photos address staff's comments regarding the choice of a monopole versus a lattice tower. I think, as you can see, this is a fairly subjective measure regarding which of these towers stands out more. The tower on the left of this photo is a monopole at Carriage Park, and as you can see, it is a fairly massive structure. It is in pretty stark contrast against the skyline. The lattice tower is significantly less costly to construct and we just would like to submit that the considerable expense added to construct the monopole, the visual appearance does not merit spending that additional money.

Again, we are in negotiations with several carriers at this site. The client that I work for has numerous tower locations and he is not in the business of building towers that he does not have an extreme level of confidence that they will be used.

Again, part of the staff's requirements state that if this tower isn't used that it will be taken down. We do agree with that. The only comment that we don't agree with staff on is the requirement that this be a monopole.

I think you received a letter from one of the neighboring property owners. There was some title work confusion on the location about the tower. I will also submit, for the record, and to you revised site plans that correct the ownership problem. I do also want to mention, regarding one of the comments made in that letter, I have spoken to the property manager for that office building at which time he specifically stated that if we were not successful with this application that we may be so inclined to move further to the west and get further away from the residential property and that he would entertain discussion about locating on the property that he represents. I would be glad to answer any questions that you might have."

CARRAHER "Are there any questions of the applicant with regard to this matter?"

MARNELL "As I recall, when you had the discussion and in the development of the Wireless Master Plan, the particular carrier was discussing very small towers that would go adjacent to apartment dwellings, in fact, they had already built some of those. This looks like a departure from that and with this again, could we look at co-locating? This is a real lightweight structure and it should be easy to locate anything on."

EDGINGTON "This structure is designed to provide location for up to 5 carriers. It is structured and engineered and we will provide evidence of that."

CARRAHER "Are there any further questions of the applicant? Thank you. Now we will open it up to the gallery. Is there anyone in the gallery wishing to speak in favor of this item? Anyone in the gallery who is wishing to speak in opposition to this item? Seeing none, we will move it back to the Commission. What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is commercial to the south and east, institutional to the north, and residential to the west. The property south and east of the site is zoned "LC" Limited Commercial and is primarily vacant commercial lots with a commercial building located immediately east of the subject property. The property north of the site is zoned "SF-6" Single-Family Residential and is developed with Benton School. The property west of the site is zoned "TF-3" Two-Family Residential and is developed with duplexes. Property zoned "SF-6" Single-Family Residential is located within the compatibility height standard setback distance. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" General Commercial, and could be developed with uses permitted by the Ridge Plaza CUP. Wireless communication facilities in excess of 85 feet in height in the "LC" district may be permitted as a Conditional Use, but typically should conform to the guidelines of the Wireless Communication Master Plan. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed self-support lattice tower does not minimize the mass, proportion, and silhouette of the facility and would have a negative visual impact on nearby residential properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for use or reconstruction, and the application does not substantiate with a radio frequency analysis the inability to use an existing or reconstructed school tower located immediately across the street from the subject property. Second, the proposed self-support lattice tower does not minimize the mass, proportion, and silhouette of the facility. The self-support lattice tower would be significantly more visually intrusive than a lightweight lattice tower measuring 18 inches on a side. During negotiations with the wireless industry regarding the Wireless Communication Master Plan, representatives of the broadband wireless industry (including ITSROE.com) stated that lightweight lattice towers needed to be permitted by right because they could not afford to construct or lease space on commercial towers or go through the expensive Conditional Use or CUP amendment process. Finally, the proposed 150-high facility does not conform to the compatibility height standard since it is proposed to be setback only 135 feet from property zoned "SF-6" located north of the site. Impact of the proposed development on community facilities: Access to the site will be from University, a local commercial/industrial street, so no negative impacts on community facilities are anticipated.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.

2. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
3. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
4. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
5. The monopole shall be located in the southern portion of the compound and shall be setback at least 150 feet from property zoned "TF-3" or more restrictive.
6. The monopole shall have a red flashing aircraft warning light mounted at the top.
7. The compound shall be enclosed by an 8-foot high solid screening fence.
8. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
9. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
10. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
11. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
12. The 65-foot by 65-foot compound for the monopole shall be designated on the CUP plan, and the uses allowed for Parcel 28 shall be modified to add: "Wireless communication facility only in designated area."
13. The following shall be added to the CUP General Provisions: "The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development."
14. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this amendment by the MAPC or Governing Body, as applicable, or the request shall be considered denied and closed.

WARREN moved, **MCKAY** seconded the motion.

WARREN "I think the FAA should be the final authority here. I don't know what Bailis Bell's expertise is in that area, but I think the FAA should have the final say."

KROUT "I just want to remind the Planning Commission that I know it is late and we have a 7:00 meeting in this room, but we talked fairly extensively, and the Airport Authority was involved in the planning for the Wireless Master Plan, and we specifically addressed the issue with the plan. Remember we had attorneys representing the industry suggesting that we just make the FAA approval the only criterion. But I think that what we heard from the Airport Administration was that the issue is much more complicated; the FAA doesn't deal with all of the issues that they deal with at the airport, so the issue of shadowing the radar, or whatever it is that comes in, it is not just a question of airplanes flying. I can't imagine that you wouldn't want to hear from the Director of Aviation before you approve this request and you would just go along with the FAA. They don't always have the answer. You saw that they already made a mistake."

WARREN "I wonder why there wasn't rationale and reason given to us? I haven't heard any reason that they have given other than we (unable to hear here)."

KROUT "My suggestion is that you at least delay it for 30 days. If you think that you need more information from the Airport Authority."

WARREN "I would have thought that they would have the courtesy to come in here with their reason rather than just to say we disapprove it."

OSBORNE-HOWES "Just a comment. The letter states the reason, and maybe it is not clear enough to us, but maybe they felt it was when they wrote it. I simply can't imagine that we would not, at the very least, defer this for a month. Can I make a substitute motion?"

SUBSTITUTE MOTION: That the item be deferred for 30 days.

OSBORNE-HOWES moved, **GAROFALO** seconded the motion.

CARRAHER "We will first deal with the substitute motion. Are there any questions or commentaries regarding this substitute motion?"

MARNELL "I will make one comment. I am a licensed private pilot. I would be in violation of a lot of federal rules if I flew down at 150 feet in that location. If I flew under 500 feet in that location, I would be subject to having my license revoked. That area right adjacent to the towers is a residential area."

OSBORNE-HOWES "Just another comment that general aviation is very important to our community and I think we ought to listen to their comments."

CARRAHER "Any questions or commentary regarding the substitute motion?"

BARFIELD "I respect what the gentleman just said, but Marvin just pointed out that basically Bailis Bell and the airport does deal with more than just general aviation. I think we need to take those factors into consideration."

CARRAHER "Any further commentary or questions regarding the substitute motion? Seeing none, we will move it to a voice vote on the substitute motion."

VOTE ON THE SUBSTITUTE MOTION: The motion failed with 5 votes in favor (Osborne-Howes, Garofalo, Barfield, Hentzen and Warner) and 6 in opposition (Michaelis, Johnson, Warren, McKay, Marnell and Carraher). Platt abstained.

CARRAHER "The substitute motion fails. So now, the motion on the floor would be the original motion by Mr. Warren, which was seconded by Mr. McKay."

MCKAY "There was a conflict of what the applicant had and what the airport people had. That clarification is what you referring to when you say FAA approval?"

WARREN "Uh huh. I think they ought to be the final authority."

MCKAY "I am saying that staff said that they have approval by FAA; the Airport Authority people say that that was a mistake. That has to be clarified."

WARREN "If there is a mistake, they may not get approval."

VOTE ON THE ORIGINAL MOTION: The motion carried with 6 votes in favor (Michaelis, Johnson, Warren, McKay, Marnell, Carraher) and 5 in opposition (Garofalo, Barfield, Osborne-Howes, Hentzen and Warner). Platt abstained.

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17. **Case No. CON2000-00049** - Richstreet Realty c/o Bob Richardson (Owner); Brad Murray Rentals, LLC; Cricket Communications, Inc.; and ITSROE.com, Inc.; (Applicants); Austin Miller, PA c/o Kim Edgington (Agent) request a Conditional Use for a 150-foot high communication tower on property described as:

Lots 1 and 2, Richstreet 2nd Addition to Wichita, Sedgwick County, Kansas. Generally located south of 31st Street South and west of Seneca.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The owner is seeking a Conditional Use to permit the construction of a 150-foot high self-support lattice tower (see attached elevation renderings) by Brad Murray Rentals, LLC for use by Cricket Communications, Inc. and ITSROE.com, Inc. The proposed site is zoned "LC" Limited Commercial. The Unified Zoning Code requires a Conditional Use for Wireless Communication Facilities over 85 feet in height in the "LC" Limited Commercial zoning district.

The proposed tower would be sited on a 4,225 square foot area located at the northeast corner of Elizabeth and Gibson. The site plan (attached) depicts a 65-foot by 65-foot compound with the tower and associated antennas located in the center of the compound and the ground-level communication equipment located in the southeast corner of the compound (see attached renderings of antennas and ground-level equipment). The site plan depicts an 8-foot high natural cedar or composite screening fence around the entire compound. The site plan does not indicate how access would be provided to the site.

The character of the surrounding area is commercial to the north and east and residential to the south and west (see attached vicinity plan). The property north of the site is zoned "LC" Limited Commercial and is developed with a multi-tenant commercial building. The property east of the site is zoned "LC" Limited Commercial and is developed with a 120-foot high monopole tower. The property south of the site is zoned "SF-6" Single-Family Residential and is developed with a single-family residence. The property west of the site is zoned "SF-6" Single-Family Residential and is an undeveloped residential lot.

The application indicates that the proposed tower is needed for part of a planned initial build-out of a wireless phone system by Cricket Communications, Inc. (see attached RF engineering evaluation). The application also indicates that the proposed tower is needed for ITSROE.com, Inc. to provide wireless broadband services (see attached letter).

The justification for the request (attached) indicates that an existing monopole tower immediately east of the site is not designed for extensions in height and has insufficient space at the bottom of the tower for additional ground-level equipment. The attached justification also indicates that the owner of the adjacent monopole tower (Voice Stream) is

unwilling to allow the existing tower to be rebuilt. The statements in the justification have not been substantiated by a structural analysis of the tower or a statement from the tower owner. Additionally, no information is provided in the application regarding the possibility of using the subject property as additional land area for ground-level equipment associated with antennas installed on a rebuilt or modified tower to the east.

The application also indicates that an existing self-support lattice tower at Kelly School to the west had not been made available to be rebuilt as of the date of application. Correspondence with school district staff (see attached) indicates that the school district is in the process of making their towers available for reconstruction. Additionally, temporary structures such as "cellular on wheels" could be used in the interim to provide limited service to the area while issues involving the availability of the school tower are resolved.

CASE HISTORY: The site is platted as part of the Richstreet 2nd Addition. A utility easement through the site was partially vacated effective June 24, 1983 (V-1169).

ADJACENT ZONING AND LAND USE:

NORTH: "LC"	Multi-tenant commercial building
SOUTH: "SF-6"	Single-family residence
EAST: "LC"	120-foot high monopole tower
WEST: "SF-6"	Undeveloped residential lot

PUBLIC SERVICES: No municipally-supplied utility services are required. The application does not indicate how access would be provided to the site.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

RECOMMENDATION: Planning staff finds that the proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and the application does not substantiate the inability and unwillingness to rebuild or modify the existing monopole tower immediately east of the subject property. Approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area, especially when interim solutions such as "cellular on wheels" are available. Second, the proposed self-support lattice tower does not minimize the mass and silhouette for the facility. A monopole tower would have less visual impact on surrounding residential properties than a lattice tower. Third, no landscaping is proposed to partially obscure the tower from view from the residential areas to the south and west. Finally, the proposed 150-high facility does not conform to the compatibility height standard since it is proposed to be setback only 125 feet from property zoned "SF-6" located south of the site. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be **DENIED**; however, if the MAPC finds the request appropriate, planning staff recommends that the MAPC make appropriate findings and that approval be subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- E. The monopole shall be located in the northern portion of the compound and shall be setback at least 150 feet from property zoned "SF-6" located to the south and west.
- F. The compound shall be enclosed by an 8-foot high solid screening fence.
- G. Access to the compound shall be from the commercial property to the north.
- H. A landscape plan shall be submitted for approval by the Planning Director that provides two shade trees to be planted and maintained adjacent to both the south and west sides of the compound.

- I. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- J. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- K. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Director of Airport Engineering for the City of Wichita.
- L. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- M. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The character of the surrounding area is commercial to the north and east and residential to the south and west. Residential properties zoned "SF-6" are located within the compatibility height standard setback distance.
- 2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" Limited Commercial, and could be developed with other commercial uses permitted by the zoning district. Wireless communication facilities in excess of 85 feet in height in the "LC" district may be permitted as a Conditional Use, but typically should conform to the guidelines of the Wireless Communication Master Plan.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed self-support lattice tower does not minimize the mass and silhouette of the facility and will have a negative visual impact on nearby residential properties.
- 4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and the application does not substantiate the inability and unwillingness to rebuild or modify the existing monopole tower immediately east of the subject property. Approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area, especially when interim solutions such as "cellular on wheels" are available. Second, the proposed self-support lattice tower does not minimize the mass and silhouette for the facility. A monopole tower would have less visual impact on surrounding residential properties than a lattice tower. Third, no landscaping is proposed to partially obscure the tower from view from the residential areas to the south and west. Finally, the proposed 150-high facility does not conform to the compatibility height standard since it is proposed to be setback only 125 feet from property zoned "SF-6" located south of the site.
- 5. Impact of the proposed development on community facilities: The application does not indicate the proposed access to the site; however, the site has frontage to a residential street, which could lead to an increase in commercial traffic on a residential street.

KNEBEL "This is a request for a 150-foot high self-support lattice tower to be constructed by Brad Murray Rentals for use by Cricket Communications and ITSROE. The property is zoned Limited Commercial, which requires a Conditional Use. There is residential property to the south and to the west of the site and commercial property to the north and to the east. There is an existing tower immediately to the east of the site. (Indicating) This is the need that Cricket Communications is attempting to address--the southwest portion of Wichita without the tower and then you can see, as you add the tower, it provides additional service.

The arguments that staff has made against this request are the same as those in the past. Existing towers are not being used, that sufficient landscaping is not being provided, that the tower is being proposed to be located closer than the compatibility height standard, which is actually, I think, unnecessary in this particular case. The distance between the property here and here (indicating) is 125 feet. I think there is sufficient space to move the tower to the north and still comply with the compatibility heights, by my calculations, rather than just ask not to.

Staff has recommended denial; however, if it is approved, we have a number of conditions, including having monopole design, locating the tower in the northern portion of the compound, accessing the compound from the commercial property rather than from Elizabeth or Gibson, and then also additional landscaping around the compound in the form of shade trees. With that, I will conclude my comments except that I need to mention that the District Advisory Board did hear this case. They recommended for denial, based on the staff comments and significant neighborhood opposition."

CARRAHER "Are there any questions for staff regarding this item?"

JOHNSON "Scott, did I understand you right, you said the existing tower there is not being used?"

KNEBEL "It is being used. According to the application, it is fully utilized. I think the application says there are three users on it, but I think there are actually two. I don't know if the picture shows that or not. That tower there is 130 feet high."

CARRAHER "Are there any further questions for staff?"

MARNELL "Is this still for a lattice tower or is this a monopole tower?"

KNEBEL "The request is for a lattice tower. You should have some letters from some neighbors regarding this place."

CARRAHER "Are there any further questions for staff regarding this item? Thank you, Mr. Knebel. Would the applicant like to speak to this item at this time?"

KIM EDGINGTON "Thank you, Mr. Chair. Commissioners, I am Kim Edgington with Austin Miller, representing the applicant on this case. Again, I think you have, in your packets, or we did submit to each of you personally a cost estimate for the cost to rebuild and relocate all of the services that are on the tower. These costs were well in excess of \$250,000 above and beyond the cost to merely construct a new site. This is an entirely prohibitive dollar amount for the industry and for businesses to be requested to bear this expense. We are in agreement with most of staff's comments. We would happily agree to move that tower north in the compound to meet the compatibility setbacks and also to access this compound from the commercial property to the north. We are also in agreement with any additional landscaping that the Commission sees fit. I would be glad to answer any questions.

Again, we take exception to the requirement of a monopole at this location, and ask for your consideration of that matter."

Warren left the meeting at 6:50 p.m.

CARRAHER "Are there any questions of the applicant regarding this item?"

OSBORNE-HOWES "Where did you get the \$250,000 figure from?"

EDGINGTON "That was an estimate submitted by an actual tower construction company. It was not part of your materials."

OSBORNE-HOWES "Do you have that with you that you can provide it to us?"

EDGINGTON "I do have one of those with me."

BARFIELD "Are there two additional carriers or three?"

EDGINGTON "There are two carriers on that tower right now, with a third that is beginning construction to site their equipment on the tower. Our in-house engineers have reviewed the structural drawings for that tower and have concluded that it is at capacity."

MARNELL "Have you considered as opposed to rebuilding that tower, to building a new site capable of holding all of the carriers, and are they willing to move to your tower?"

EDGINGTON "I can't answer as to the wishes of other carriers that we don't represent; however we are planning to make this tower capable of holding at least five carriers, so there would be the opportunity for that move to be made and again, Mr. Murray being a tower builder, he is in the business to market that tower and will do so to the best of his ability."

CARRAHER "Are there any further questions of the applicant? Thank you, Ms. Edgington. We will now move to the gallery. Is there anyone wishing to speak in favor of this item?"

GREG FERRIS "In this case, I represent only Cricket Communications. Cricket Communications, I think, has provided you with the plats that show and demonstrate a need for a tower in this area. We do intend to locate on this tower and would be glad to answer any questions you might have."

CARRAHER "Are there any questions of the speaker?"

BARFIELD "I don't know if this would be for Greg or for Kim, but what is the distance between the proposed tower here and the tower at Kelly Elementary."

FERRIS "That would be for Kim."

EDGINGTON "That distance is approximately a quarter of a mile. Again, I think that comes back to the issue that we covered very well earlier today."

BARFIELD "But however, I must ask this question. If, as Mr. Muci said, they did have a management firm in place by December 1 and if this tower of Kelly Elementary could be made available by, say December 15, would that be feasible for you?"

EDGINGTON "I am going to defer back to Greg on that. He is more familiar with their system requirements."

FERRIS "I think we have been down this road, Mr. Barfield, but we would be glad to address it. If the school district towers were available on December 1, if they were available for use on December 1, we wouldn't have even been here today. But we know that they are not going to be available. They may have somebody in place and I don't really want to go into the deliberations we went into before, unless you want me to, for the record."

BARFIELD "We have been down this road before and I appreciate that. But we have also been down the road of having so many towers in such close proximity. That is what I am trying to see if we can eliminate."

FERRIS "From Cricket Communication's standpoint, we need service in this area before the years' end. We have looked at this tower. It is not structurally able to handle any other equipment. It cannot be extended. We have evaluated that and we cannot use that tower. There are no other towers in this area that are available for our use at this time. We have, then, contracted with Mr. Murray to locate on this site."

BARFIELD "I know that 'if' is a big word here, but again, I want to ask this question. If they did have in place a management firm and if the tower at Kelly Elementary could be made available by December 20th, would that be acceptable to you?"

FERRIS "If that tower was constructed for use by a wireless provider. In other words, rebuilt, reconstructed to the standards that we require in our industry and it was in the ground and constructed and done by December 20, we would not have a problem with that. We have nothing that has been presented or no information that anyone would believe that that could be done. In fact, I can tell you that it would be physically impossible to get a company in place December 1, have them design a tower, do the soil testings that are required for the type of pole that is required for PCS construction and then to construct a tower and have it done this year. It would be impossible."

CARRAHER "Are there any further questions of Mr. Ferris? Seeing none, thank you, Mr. Ferris. Is there anybody else in the gallery who wishes to speak in favor of this item?"

TIM AUSTIN "I am agent for the applicant. I just want to clarify one point for Mr. Marnell. We do represent the owner of that existing tower and I can tell you with absolute certainty that they would not be agreeable to that tower being rebuilt."

CARRAHER "Are there any questions for Mr. Austin?"

MARNELL "I don't think that was quite the question. I wondered if you would move to this tower since this is going to be a taller tower apparently built to handle more load and have more antenna locations than that one."

AUSTIN "Yeah. I don't think they would agree to have their equipment relocated since they own the tower and they are currently on that tower as well. There is a cost involved to relocate the equipment. If you ever want to know what goes into those cost estimates, I would be happy to address that as well, but there are significant costs."

CARRAHER "Are there any further questions of Mr. Austin? Is there anybody else in the gallery who wishes to speak in favor of this item? Is there anyone in the gallery who wishes to speak in opposition to this item?"

TODD ENDERS "I live at 3244 South Elizabeth. My house is right there (Indicating). I don't know if any of you live by a tower, and that one gentleman said they don't make noise--with a 20 m.p.h. wind or even a little bit less, probably, is like a tornado siren, but not as loud without the tones drop. It is just a constant howl with the windows closed, winter or summer. They proposed a lattice one, which I would think would be even noisier with all of those bars going through it."

West of the National Guard Armory there at Meridian and I-235, there is a whole, huge cottonwood field and they said that they needed coverage on I-235. There are big cottonwood trees and they could put it right in the middle of there or South High field, which is a bunch of acres if the companies would choke up some money and pay the school board to actually construct a tower that would be adequate for it. There is another tower like you see here, probably less than 150 yards away, and you can see them, and when you turn the other way, you can hear them. Either way, it doesn't really matter. I was kind of wondering what the distance between the towers was for it to be legal? Between big towers like this."

GERALD HARJO "I live at 1401 West 32nd Street, which is just about straight south from that existing tower right now. When I step out my front door, it is the first thing I see. I don't care how much landscaping they put there, that will be the first thing I see. If we have a 30 foot maple tree in the front yard, we can still see the tower. I don't think any amount of landscaping is going to cover it up. In addition, if they build this other tower, there are going to be two towers there. And this thing does make noise. I hate to disagree with you but I live there year around and it makes noise."

Just like he said, it sounds like a tornado siren. It is a little bit lower, not quite as loud, but it is definitely a noise, and it is irritating. I don't know what a lattice tower, how much noise that thing would make, but I am sure some of you have heard the wind as it goes through an old windmill. You know that thing makes noise, too. So if we are going to have one that is 150 feet tall, it is going to make noise and it is going to be an eyesore. That is all."

CARRAHER "Are there any questions for the speaker. Thank you, sir. Is there anybody else in the gallery who wishes to speak in opposition?"

GEORGE SCHULTZ "I live at 3248 South Elizabeth. I know there are people here that think that that tower doesn't make a noise, but it definitely does. It seems like it is a little bit stronger in the wintertime than it is during the rest of the year."

Maybe it is because of where I live, but I think consideration ought to be given to us. We already have one tower and I think there is all kinds of space down in that area to put another tower in. If you don't have a tower in your back yard, I would welcome you to take this one.

I understand we are on the property as Light Commercial right now and I am sure it is going to be rezoned. It is in the process of being rezoned to 'GC', which is General Commercial.

I understand from what I have gotten off of the Internet on the planning proposal and stuff that we should be at an 85 foot tower there and we already have one that is over and above that. Nobody knew it was coming. You get up one morning and there the thing was starting to go up. I definitely think it ought to be put someplace else. A lattice would be more of an eyesore than what we have there now. It is a flat open field, there is no landscaping done around the other one, you look right straight in on the thing. I can bring you a picture of it if you really want to look at it. I would definitely hope you will disapprove it. Thank you."

CARRAHER "Are there any questions of the speaker? Thank you, Mr. Schultz. Is there anyone else in the gallery who wishes to speak in opposition to the item?"

LUPE VILLAR "I live at 1402 West 32nd Street South. The first tower was put up just maybe 50 feet from my back fence. I just went home one day and it was there. We were never notified that it was going to be put up, but apparently from what Scott told me, it was zoned Light Industrial at that time so the neighbors did not have to be notified. This other tower is maybe a block from that one, so we are going to have two in our area. I am concerned about our property values going down. Our taxes have gone up since it has gone up, maybe three years, but I am sure our property value has gone down even with that one tower there. I don't know what it would do if there are two in that same neighborhood.

Also, it is very noisy. It is an eyesore. The people that own that shopping center now and lease it out, I think there is a title company, and a chiropractor, and I don't know what all else is in there. The back fence is not properly maintained. There is always a section of it down. Before that first tower even went up, they used to have a concrete mixer back there and my husband had to run some kids off because they were inside the thing getting into it. I am kind of concerned about the kids being able to have access to the tower. I don't care what kind of fence they are going to put up, I still think the kids in the neighborhood might be able to get through there. I think that is all I have. The main thing is that we have one there now that we did not approve of, but apparently our voice didn't matter. I am hoping that you will vote against it because like I said, it is within a block of that one. Thank you."

CARRAHER "Are there any questions for the speaker? Thank you, Ms. Villar. Is there anyone in the gallery who is wanting to speak in opposition to this item? Seeing none, we will yield the floor to the applicant for a two minute rebuttal."

KIM EDGINGTON "I am with Austin Miller, representing the applicant. In anticipation of this issue coming before us, I will submit, for the record and for all of your information, some appraisal data from the Sedgwick County Appraiser's office. You will see, listed on this spreadsheet, Ms. Villar's property and also the properties of all of the people that were present at the District Advisory Board meeting. Once you get a chance to look at this, I think you will see this steadily increasing property values. There is a trend that occurs at each of these addresses, so again we feel that the statement that a tower nearby decreases property value is not founded. We submit this for your consideration.

Other than that, we do have a willing landlord at this site. We have looked in the site ring for any other available properties and again, this is the one that works out with the landowner for a lease agreement. I would be glad to answer any other questions. I will just say that in my experience of visiting these towers a lot and in all kinds of weather conditions and at the lattice towers, I have never, myself, experienced any noise emitting from those towers or because of those towers.

There are several other businesses located at that site that could possibly be the cause of some of the noise that is emitting. There is an auto body repair shop that I am sure uses numerous types of tools."

CARRAHER "Are there any questions for the applicant?"

OSBORNE-HWOES "My question is you passed around information about the property values. Did you spend any time talking with the neighbors? Have you visited with them at all about this--listened to their concerns? Just talked to them personally?"

EDGINGTON "Aside from speaking at the District Advisory Board meeting, the answer to that is no."

CARRAHER "Are there any further questions of the applicant? Thank you. I will bring this back to the Commission. What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is commercial to the north and east and residential to the south and west. Residential properties zoned "SF-6" are located within the compatibility height standard setback distance. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" Limited Commercial, and could be developed with other commercial uses permitted by the zoning district. Wireless communication facilities in excess of 85 feet in height in the "LC" district may be

permitted as a Conditional Use, but typically should conform to the guidelines of the Wireless Communication Master Plan. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed self-support lattice tower does not minimize the mass and silhouette of the facility and will have a negative visual impact on nearby residential properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to several of the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. The school district has indicated that it is in the process of making its towers available for reconstruction, and the application does not substantiate the inability and unwillingness to rebuild or modify the existing monopole tower immediately east of the subject property. Approving a new tower to be constructed at the proposed location would lead to an unnecessary proliferation of towers in the area, especially when interim solutions such as "cellular on wheels" are available. Second, the proposed self-support lattice tower does not minimize the mass and silhouette for the facility. A monopole tower would have less visual impact on surrounding residential properties than a lattice tower. Third, no landscaping is proposed to partially obscure the tower from view from the residential areas to the south and west. Finally, the proposed 150-high facility does not conform to the compatibility height standard since it is proposed to be setback only 125 feet from property zoned "SF-6" located south of the site. Impact of the proposed development on community facilities: The application does not indicate the proposed access to the site; however, the site has frontage to a residential street, which could lead to an increase in commercial traffic on a residential street.) I move that we deny the request based on staff comments, the D.A.B. recommendation, the proximity to residences, opposition by the speakers who were here, and the fact that there is already one tower there.

GAROFALO moved, **OSBORNE-HOWES** seconded the motion.

CARRAHER "Is there any commentary to the motion on the floor?"

MARNELL "I have a question for Marvin. The existing tower that is there, did that not have the standard conditions that have been placed on these towers of being able to be increased in height and the requirement to accommodate other carriers? This seems like a real travesty in this situation. When we are talking about really tall towers like occur west of Wichita, you end up with places called 'tower farms'. Those are done because they put things that are really hazards to navigation in a concentrated area as opposed to all over. But I don't think we want a proliferation of towers sitting adjacent to each other in what is near a residential area. There should be a way to accommodate joint use of a facility there."

KROUT "This tower was constructed before the 1997 Ordinance where those requirements were established so we don't have the leverage on this property owner to have him cooperate in the way we do over the more recent towers."

CARRAHER "Is there any further questions or commentary regarding the motion on the floor? Seeing none, we will move into a voice vote."

VOTE ON THE MOTION: The motion carried with 10 votes in favor. There was no opposition. Platt abstained.

18. Reviews for consistency with the Comprehensive Plan

- 18A. Proposed City of Wichita CIP for 2001-2003
- 18B. Proposed annexation by city of Maize
- 18C. Proposed annexation by City of Valley Center
- 18D. A 00-16 - The City of Wichita seeks the annexation of properties generally located south of 55th Street South from west of Seneca to the east and west of Grove.

MCKAY "On Item 18a, Mr. Chair, all we need is a recommendation for approval, is that right?"

CARRAHER "I believe so."

KROUT "I think we have speakers on Item 18B, but if you would like to approve the recommended action on 18A, 18C and 18D, I think you could do that. "

MOTION: That the areas be found appropriate for annexation and that the Metropolitan Area Planning Commission find the unilateral annexation compatible with the adopted Comprehensive Plan.

MCKAY moved, **WARNER** seconded the motion.

CARRAHER "Are there any questions or commentary regarding that motion?"

MARNELL "On the wording for the recommendation, you have this as an amendment to the adopted plan. Do we have to amend that every time, or is this just an approved variation?"

KROUT "We are not amending the plan. This is just an amendment to the C.I. P."

MCKAY "It says amendment in the last sentence."

KROUT "What happens is that the City Council is adopting the C.I.P. Their action, according to the state statutes, have the automatic type of changing the plan. They will amend the plan when they approve the C.I.P."

CARRAHER "Are there any other questions or commentary regarding this? Seeing none, we will move into a vote."

VOTE ON THE MOTION: The motion carried unanimously (11-0).

CARRAHER "We will now move to Item 18B. That is the proposed annexation by the City of Maize."

KROUT "Toni, could you explain briefly to the Planning Commission what this is all about? We do have the Maize City Administrator and we do have at least a couple of patient people who have been here and who appeared at the County Commission last Tuesday and want to address you about this proposed annexation."

TONI FAIRBANKS, Planning staff "The map before you is the area of interest. The City of Maize is asking to annex the property adjacent to its city limits to the west, south of 53rd Street, and approximately half mile north of 45th Street. The Planning Commission is here to review the compatibility or incompatibility with the Sedgwick County and Wichita Comprehensive Plan and the City of Maize Comprehensive Plan.

This is a little bit different from most of the annexations that you are used to reviewing in that this is not a unilateral annexation under 520, it is an annexation under 521, which requires the City to comply with the following requirements. They are supposed to petition the Sedgwick County Board of County Commissioners, provide them with a service plan and to address 14 items to be reviewed by the County Commission as to the manifest injury to the city, the residence, annexation area, or any other governmental units, providing services. This was reviewed yesterday and was continued until next week. No. 530, which comes before you, Maize was required to provide a copy of this petition to the Planning Commission and you are being asked now to find compatibility or incompatibility with the City of Maize Comprehensive Plan and the Wichita/Sedgwick County's Comprehensive Plan.

This second map shows that the area is within Wichita's Sedgwick Comprehensive Plan, and you have a handout that was provided by Carol Bloodworth, the City Administrator, that shows the area within their Comprehensive Plan as part of their future sewer system area. Carol Bloodworth is here to also talk about the specifics of their Comprehensive Plan."

CARRAHER "Are you wanting to field any questions or to yield the floor?"

FAIRBANKS "I will yield the floor to Carol Bloodworth."

CAROL BLOODWORTH "I am the City Administrator at Maize. The City of Maize decided to do this annexation in this manner rather than do a serial annexation in that a number of these properties were eligible for unilateral annexation, but others you would have to do one, and then another, and then another. Rather than go through half a dozen processes, the city decided to try to do this all at one time and get the annexation off of the table.

All of these properties have homes on them. They were all identified in the 1980 plan for annexation as to be annexed in the 10-year plan between 1982 and 1992. The properties that we are talking about were those ones that should have been annexed in the early part of the 1980s, according to this plan. So this is compatible with the City of Maize's Comprehensive Plan. This area is in the north and west portion of the City of Maize. It is not an area in which any other community has an interest."

CARRAHER "Are there any questions of the speaker regarding this item? Is there anybody else in the gallery who wishes to speak to this item? Either in favor or against."

GEORGE HUFFMAN "I would like to speak against it. I fall within the area that they are wanting to annex. I have been provided with very little information about this. Yesterday, I was told that our property has a drainage problem. That is erroneous. The drainage comes from the City of Maize onto our properties, not the other way around. The biggest problem they have with the drainage is far to the east of Maize where the railroad track and K-96 Highway goes.

So by annexing us, it is not going to improve their drainage problem. We have not been approached that we could work out anything for their drainage problem. I have not been privy to a lot of the information that you have been given as far as what has been going on here.

Another thing, they are telling us that the reason they are doing this is because of the water and sewer. The water is non-existent. They do not have water in Maize. Everybody is on private well. So that is not a reason to put us in there. The sewer, we were told that there is a line that runs along the north side of 53rd Street. That sewer line could be brought over to our property at our cost, which is very expensive, to bring it across 53rd Street and then also for half a mile along there. We would have the privilege of paying for all of that cost as well as we would have to do that within three years. There has been no negotiation, very little communication on this. The other part of what they are talking about; their plan, is another community there, called US 266, which is the school district, that they have not annexed. That is far more important as far as their sewer and water concerns are because you have probably 2,500 to 3,000 people in this area right to the south of the property that they are going to annex now that is a much bigger problem and concern than what we are.

It seems to be, from my standpoint, an extra burden. I am going to pay higher taxes, which nobody likes and you can appreciate that, but I am going to incur an awful lot of extra expenses at no benefit to me just so the City can have more property within the city limits for their bigger tax base. My property is 99% farm ground. Why they want that in the city, I don't know. It is not platted. There are not any houses on most of it. I own 21-1/2 acres and the other big owner owns 30 acres and there are three houses on that. It is mostly farm ground. So I don't see the need for them to be taking us in and not taking the other areas and answering to their own problems."

Warren left the meeting at 7:20 p.m.

Platt left the meeting at 7:20 p.m.

CARRAHER "Are there any questions of the speaker?"

HENTZEN "Could you point out on that map where your property is and where the Maize school is?"

KROUT "Toni, I think the other map would be easier."

HUFFMAN "I am right next to 53rd Street here."

HENTZEN "And that is 119th West to the left there?"

HUFFMAN "Yeah. But this isn't a good map of the area. This is my property here (indicating)."

Switched to the map Marvin earlier suggested.

HENTZEN "And where is the school that you are talking about?"

HUFFMAN (Indicating) "The school is right here. They own a quarter of ground right here. That is where the Pray-Woodman school and the Maize High School is. One of their other little scenarios was because of the bond issue that just passed yesterday of \$32.9 million, Maize is going to build more schools. But they are going to build those schools down between Maize Road and Tyler Road south of 37th Street. They don't have that map up there, but if you looked at that map, Wichita has all of the facilities right across the street from there. That is right across from the Wichita City limits. Part of their plan, I guess, on the water part of it, I can understand they want more population to be able to do that, but we are talking about seven property owners, 62-1/2 acres. It is not heavily populated. I object strongly to it because I don't see a need for the city to have it.

We were originally told that what their real idea was that they wanted to get out here to this development out here (indicating) because these people are complaining about floods every time it rains. I grew up out there, and I am 54 years old, and it has flooded every since I was a little kid. It flooded way before they built the houses in there. I don't think I should pay to take sewer out to those people."

CARRAHER "Are there any other questions for the speaker?"

HENTZEN "I just wanted to ask him where that Coleman plant is."

HUFFMAN "The Coleman plant is right up here (indicating). It is on 119th North. Now it is already on the sewer. That is why that line is across there in the first place. The city is not willing to pay for any of these improvements. They are just saying that we are going to have to do it all ourselves. That isn't right. That is causing me monetary harm."

CARRAHER "Any other questions of the speaker? Thank you, sir. Is there anyone else in the gallery who is wishing to address this item?"

JODY ADAMS "I live at 11139 West 53rd Street, which is part of what they want to annex. Where they want to annex, and they say there is a sewer line behind my house. (Indicating) Here is my house. They are saying that we may be able to get sewer from here; however, this sewer line is just too high and we can't have our sewer hooked up to it. Another problem we have with it is that they want to cross 53rd Street with this line and they are saying they are going to come to here (indicating), put a man hole, and that is it. They even refused to run this line up to our property line because they said that Sedgwick County let us plat it the wrong way. In net worth, we are going to have to run ours all the way out to 53rd Street crossing other property owners that we don't own, and we don't think that is right.

Another thing, speaking for my father-in-law, he owns two of these pieces of property. He is retired and cannot afford all of the extra that they want to put on to us for the sewer line and raise our taxes 15.8% on top of what we are already paying now per parcel of land that he owns. They are saying that our benefits will outweigh the expense and I can't see that when they say that the expense of the sewer line will cost us all roughly \$20,000 to be split among. We have had people tell us that that is extremely low since they have to bore 53rd Street to get the sewer to us.

They want us to give them easements, they want to take our trees, and they want us to give up everything so we can drive on their city roads. That is how they put it to us. We don't have a city road. Fifty-third Street is maintained by the State of Kansas, therefore they have no reason to maintain it at all and they won't give that up. Therefore they are saying that we have all of these benefits for paying all of these extra taxes, with some of us on a fixed income and then we get police protection. We are satisfied with the Sedgwick County Sheriff's protection. They do an excellent job for us. We have had no problems with them whatsoever.

The water issue is another thing. If they do get water. Some people in Maize, I guess, have really poor water. I have good water. I don't have a problem with my water. My water system is 5 years old and my sewer system is 5 years old. They work great. I don't need anybody else's sewer or water, but rumor has it that the cost of that, just to put the meter in to your property is like \$6,500 and then you have to hook up to it, which is going to cost you another \$2,500. Then we are expected to pay taxes, sewer and everything else on a monthly basis. I have a real problem with all of the charges that they want to impose on us without us getting anything at all.

Granted they say that we have three years to hook up to sewer, but in those three years we still have to pay their taxes, but they don't have to offer us anything besides their police protection. Then come yesterday we find out that they have five years to come back in front of the Council, and if they don't give us what we want, then they still have 2-1/2 years to go back and fix the problem. So we could be paying taxes for up to 7-1/2 years without getting anything from the City of Maize and then we can be de-annexed. That is the way they put it. I have a real problem with paying taxes and getting nothing for 7 years. That is about all I have."

CARRAHER "Are there any questions of the speaker?"

MICHAELIS "I would just like to make a comment. You have done an extremely good job of presenting your side and you have been very patient today and I appreciate your coming. Your kids have been very good, all things considered. It shows that you think that this is very important and I think you should be applauded for that."

ADAMS "Thank you very much."

CARRAHER "Are there any further questions of the speaker? I have to echo Mr. Michaelis' comments. Being the parent of two young children myself, I can understand how trying it can be going out to a public place where everybody else is calm and they are just being kids. Is there anybody else in the gallery who wishes to speak to this item?"

HAROLD ADAMS "I am the father-in-law that she was talking about. So you know where my property is, but I will show you again (indicating). I am definitely on a fixed income and I can't even imagine how I can afford it if you double the things that my daughter-in-law just said because I have two pieces of property.

We can't get any answers from Maize. We have never had any Comprehensive Plan of any kind. They gave us a little map that showed a pencil mark across 53rd and then down the street, so we are really in the dark. We don't have any idea of what we are going to get or what it is going to cost us to do this. My neighborhood, Mr. Huffman, bless his heart, he made a good presentation, and I will second everything he said. Thank you."

CARRAHER "Are there any questions of the speaker? Thank you. I am going to allow for rebuttal by the City Administrator, if she so chooses to take advantage of that."

BLOODWORTH "It is a little difficult sometimes to quash roomers of the sort that I have just heard. Some of those I just heard today as far as what the costs are going to be. On our water system, we will be finalizing the water rights by the first of December and getting started on a public water supply for Maize, which is very, very important. It is important to us to lay out our distribution system up front because it is much less expensive for everyone, rather than going out and adding on at a later time.

In figuring out the cost, of course we are not going to know the total cost until those bids come in and we know what it is, but our anticipated costs at this time would, as far as paying for it with rates would be about...we are looking at the \$36 a month. That does sound high; however, the savings on the fire insurance on an average home in Maize is \$250. So when you take that cost and deduct it from what your water bill is, you have fire protection and your water is very, very inexpensive.

That is what the cost, at this point, that the water system is going to be. So, I don't know where the numbers came from. You know how these things get talked around. But that is what we are talking with our engineers and our finance people about. That is what we have always been talking about with them. I think the Wichita paper, at one time, wrote an Op Ed type piece that was extremely fascinating and totally misleading as far as facts were concerned, but in communicating with the people who are being annexed, I offered to meet with all of them and did meet with most of them prior to the

Council meeting of last May. I have spoken to most of them since then. So before we even talked about it, we visited with all of the people who were involved and who cared to come in and visit. That was most of them.

As you know, the service plan is available at City Hall. Most of the people have picked up the service plan."

CARRAHER "Are there any questions of the speaker?"

HENTZEN "Yeah, one quick one. Ms. Bloodworth, you have a mil levy out there for the county and for the school district and the City of Maize. Can you tell me what the mil levy is for the City of Maize?"

BLOODWORTH "It is going to be 35 for the City. For the others, I can't tell you off the top of my head. The city did vote, this year, to add an extra 5 mills to the city levy. It was 29.95 or something like that. This was in order to take care of drainage problems. We just have to spend some money on getting some drainage problems answered. So the City Council bit that bullet and added that to our mil levy this year. It will be for this coming year."

CARRAHER "Are there any further questions of the speaker?"

MARNELL "Did you address the lady's concern about the cost of connecting to the sewer system as well?"

BLOODWORTH "Well, the cost of the sewer system, our engineer's estimate of crossing the road and serving those properties was \$20,000. The sewers would be paid for in exactly the same way that everybody else who lives in the city benefit district paid for theirs. Nobody got their sewer for free. I don't think any of you did, either. The benefit district and the people who are in the benefit district will be the payers. At the time the three-year window is up, we expect to be further out here so there will be more people involved in a larger benefit district. That is one of the reasons we are talking about three years down the road as the minimum as far as sewage is concerned. You must realize that we all have a septic system and a well on our lots. This area is subject to run-off type flooding. There is a detention pond in here (indicating) that they have constructed themselves. Here you have 50 mobile homes on a linked water system, and you have all of these septic tanks here (indicating). You are asking for a health problem. You just can't go on forever with septic systems and wells when you get this size of a population. It is just no longer feasible to do that."

MICHAELIS "Can you tell me why, logically, it seems to me that if you already have the sewer running along 53rd Street, why you are not going out to 119th Street now?"

BLOODWORTH "I would tell you it is ignorance. My understanding of the annexation law required that we come to the County with anything; that we couldn't annex anything over 21 acres without consent. That was agricultural. There is agricultural that is over 21 acres there. I did not realize that we could ask the County even if it was over 21 acres and was totally agricultural. So I didn't understand the annexation law. I was looking at the 21 acres and thinking I could not do that. If I had known that, we would have been there."

CARRAHER "Are there any further questions? Thank you. We will move it back to the Commission. What is the pleasure of the Commission?"

GAROFALO "I have a question of Mr. Krout. I guess all we can do here is just determine that it is in accordance with the Comprehensive Plan, is that right?"

KROUT "Officially, that is what the statute is asking you to do, and what the County Commission is asking you to do, to make a finding as to whether or not this annexation would be consistent with the County's plan, which is the Comprehensive Plan, and with Maize's Plan. My advice to you is that you have the information in front of you, there just isn't any question about it. I think you have to report to the County Commission for their meeting next Wednesday that this annexation would be consistent with that plan.

The County's job is a little bit different. The County's job is to weigh the benefits and the hardships to the City of not annexing this property to the property owners of being annexed and go ahead and either approve or not approve Maize's request. This is kind of like the C.I.P. Sometimes the Planning Commission is required to find projects are consistent or not consistent with the Comprehensive Plan, but then you do tend to go beyond that when you have the time and say 'we recommend that you add this project, remove this project, move this project in the C.I. P.' So what I told the County Commission was that because people were coming here and they had an expectation that they were going to be heard that if you had additional comments or recommendations that you wanted to provide to the County Commission in addition to the finding of the consistency with the Comprehensive Plan, we would send those over for their review before they meet again next Wednesday."

MICHAELIS "Okay. In lieu of that, then, I think I would make a comment that I would feel a lot better if the whole area out to 119th Street was included. If you are talking about a benefit district, it seems much more logical to spread that cost out on more benefactors instead of trying to pick a few and then come back in two or three years and do another one. I would feel that it would be more consistent with the Comprehensive Plan if the whole annexation was done. I don't know what it would take to redo it, but re-propose it to where it is out to 119th. I don't think it is an equitable situation the way it is presented here."

MARNELL "Marvin, will the County Commission meeting be a public hearing where these folks can be heard again?"

KROUT "Yes. They were heard Wednesday. They continued the hearing, so they will be able to be heard again next Wednesday."

CARRAHER "Are there any further questions? I guess we now need to decide whether or not this falls within the guidelines of the Comprehensive Plan. Would that be correct, Mr. Krout?"

KROUT "Yes, and add additional comments. I am trying to take notes on those. You may want to make a motion to forward the comments of Commissioner Michaelis to the County Commission."

CARRAHER "I will open the floor to such a motion."

HENTZEN "I was there the other day when the County Commission heard this case. I think we have to say that this annexation of this area fits within the Comprehensive Plan of the County and the City of Maize. But I think we also should send them what Jerry Michaelis suggested that they consider a larger benefit district. We can be specific about it by making it over to 119th Street.

MOTION: That the Planning Commission find that the annexation of this area fits within the Comprehensive Plan of Wichita/Sedgwick County and the City of Maize, but that they consider a larger benefit district, specifically over to 119th Street.

HENTZEN moved, **GAROFALO** seconded the motion, and it carried unanimously (9-0).

CARRAHER "Are there any other matters? Seeing none, I will open the floor for a motion for adjournment."

MOTION: That the Metropolitan Area Planning Commission officially adjourn.

OSBORNE-HOWES moved, **GAROFALO** seconded the motion, and it carried unanimously (9-0).

The meeting formally adjourned at 7:45 p.m.

State of Kansas)
Sedgwick County) ss

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2000.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)